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THE

OLITICAL CODE.

California. Laws, statutes, etc.

THE

POLITICAL CODE

OF THE

STATE OF CALIFORNIA,

As enacted in 1872, and amended in 1881.

WITH NOTES AND REFERENCES TO THE DECISIONS
OF THE SUPREME COURT,

BY

NATHAN NEWMARK,
OF THE SAN FRANCISCO BAR.

SAN FRANCISCO:
SUMNER WHITNEY & CO.
1881.

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PREFACE.

In this edition of the Political Code, the entire text, which has been subjected to greater changes than that of any of the Codes, is presented as in force at the present time. All the amendments since the adoption of this Code, including those of the regular and special sessions of 1881, have been incorporated, the sections being printed as they appeared to stand under the rulings of the Supreme Court. The time when each amendment goes into effect is noted when different from the usual period of sixty days after passage; otherwise the date of approval, merely, is given.

The notes aim to embody in the least possible space, under the appropriate sections, the gist of all the decisions rendered by the highest tribunal in the State. The system of annotation employed is substantially the same as that adopted in the Code of Civil Procedure. Catch-words in graphic type are used with the same suggestive design. In the important departments of Taxation and State Lands, where greater fulness seemed desirable, it has been the endeavor to secure it without sacrificing compactness of expression.

Statutes of a general nature, either affecting the text of the Code or having a material bearing on the topics it covers, have been incorporated in the Appendix. Although there are numerous cross-references in the body of the work, the Index, which is framed on the alphabetical plan, has been made unusually copious. Altogether the hope is entertained that the volume will be found useful not only to the profession, but also to county officers and other citizens whose duties it concerns; and that it will merit the appreciative favor accorded to the similar edition of the Code of Civil Procedure.

NATHAN NEWMARK.

San Francisco, Aug., 1881.

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GENERAL LAWS 1871-2—1881.

THE POLITICAL CODE

OF THE

STATE OF CALIFORNIA.

AN ACT
TO ESTABLISH A POLITICAL CODE.

[Approved March 12, 1872.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Title of the Act.

1. This Act shall be known as THE POLITICAL CODE OF THE STATE OF CALIFORNIA, and is divided into five Parts, as follows:

Political Code—is one statute, E. v. Bd. E. of S. F., Aug. 12, 1880, 6 Pac. C. L. J. 69, per McKinstry, J.

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II. OF THE CHIEF POLITICAL DIVISIONS, SEAT OF GOVERNMENT, AND LEGAL DISTANCES OF THE STATE.

III. OF THE GOVERNMENT OF THE STATE.

IV. OF THE GOVERNMENT OF COUNTIES, CITIES AND TOWNS.

V. OF THE DEFINITION AND SOURCES OF LAW; THE COMMON LAW; THE PUBLICATION AND EFFECT OF THE CODES; AND THE EXPRESS REPEAL OF STATUTES.

THE POLITICAL CODE

OF THE

STATE OF CALIFORNIA

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2. This Code takes effect at twelve o'clock, noon, of the first day of January, eighteen hundred and seventy-three.

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3. No part of it is retroactive, unless expressly so declared.

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4. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this State respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

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5. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Similar provision—by § 5 of the other Codes.

Continuation of existing statute—as to office of Inspector of Gas Meters; see 49 Cal. 412, per Rhodes, J.

6. All persons who, at the time this Code takes effect, hold office under any of the Acts repealed, continue to hold the same according to the tenure thereof, except those officers which are not continued by one of the Codes adopted at this session of the Legislature, and excepting offices filled by appointment. [Approved March 30; in effect July 6, 1874.]

Similar provision—in Code Civ. Proc., § 6.

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7. When any *office is abolished* by the repeal of any Act, *and such Act is not in substance* re-enacted or continued in

either of the four Codes, such office ceases at the time the Codes take effect.

Same provision—in Code Civ. Proc., § 7.

Repeals—§ 18 and notes.

8. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this Code as far as applicable.

Similar provisions—in Civil Code, § 6; Code Civ. Proc., § 8; Penal Code, § 6.

Pending actions and proceedings—not affected by Codes, 45 Cal. 221; 46 Cal. 643; 47 Cal. 58; 48 Cal. 35. 646; 49 Cal. 269, 340, 446. Effect of statutes generally on, 23 Cal. 40; 31 Cal. 122.

Right accrued—under will, not affected by Codes, 48 Cal. 643.

Vested rights—not to be divested by statutes, 2 Cal. 524; 6 Cal. 650; 7 Cal. 347, 479; 15 Cal. 515; 16 Cal. 31; 18 Cal. 590; 22 Cal. 294; 29 Cal. 253; 33 Cal. 108; see also Desty's Const. Cal. 209, 211. and 204. 205.

9. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed part of the time prescribed as such limitation by this Code. [Approved March 30; in effect July 6, 1874.]

Same provision—in Code Civ. Proc., § 9.

Limitations of civil actions—see Code Civ. Proc., §§ 312-363.

No retrospective operation—of statutes of limitation, 6 Cal. 430.

Effect of Codes—on period of limitation, before amdt. 1874, 50 Cal. 612.

10. Holidays, within the meaning of this Code, are every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday. [Approved April 9, 1880.]

Similar provisions—in Civil Code, § 7, and Code Civ. Proc., § 10.

11. If the first day of January, the twenty-second day of February, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday. [Approved March 30; in effect July 6, 1874.]

Similar provisions—in Civil Code, §§ 7, 8, and Code Civ. Proc., §§ *10, 11.*

12. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

Same provision—in Civil Code, § 10, and Code Civ. Proc., § 12.

Time prescribed—in statutes, when held directory, 15 Cal. 221, 384; 23 Cal. 524, 33 Cal. 487.

Exclusion of first day—rule of Codes followed, 51 Cal. 514; before Codes, variable rule, 8 Cal. 412.

Fraction of day—regarded when important, 1 Cal. 406. 415; 14 Cal. 566; 49 Cal. 285. 289.

Sunday—intervening, not counted. 6 Cal. 660; 31 Cal. 241, 271; as day of publication, 32 Cal. 347; 50 Cal. 210; promissory note, payable on, when barred, 47 Cal. 579.

13. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

Same provision—in Civil Code, § 11, and Code Civ. Proc., § 13.

Before Codes—promissory notes due on Sunday payable on preceding Saturday, 47 Cal. 579.

14. When the seal of a Court, public officer or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

Same provision—in Code Civ. Proc., § 14.

Seals of courts—see Code Civ. Proc., §§ 147–153.

Private writings—seals for; see Code Civ. Proc, §§ 1929–1934.

Abolition of Distinction—between sealed and unsealed instruments; see Civil Code, § 1629; Code Civ. Proc., § 1932.

Impression of seal—sufficient; see Civil Code, § 1628, 5 Cal. 220, 315.

15. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.

Same provision—in Civil Code, § 12; Code Civ. Proc., § 15.

Majority may act—54 Cal. 289; unless joint action expressly required, 47 Cal. 363.

16. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are *to be construed according* to such peculiar and *appropriate meaning or definition*.

Same provision—in Civil Code, § 13, and Code Civ. Proc., § 16.

General rule of interpretation—is embodied in section, 42 Cal. 35. 43 Cal. 332; 44 Cal. 366.

Words of a contract—how interpreted; see Civil Code, § 1644.

Terms of a writing—how construed; see Code Civ. Proc., § 1861.

Technical words—see Civil Code, § 1645.

17. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes both real and personal property.

Two—The words "real property" are coextensive with lands, tenements and hereditaments.

Three—The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Four—The word "month" means a calendar month, unless otherwise expressed.

Five—The word "will" includes codicils.

Six—The word "writ" signifies an order or precept in writing, issued in the name of the People, or of a Court or judicial officer; and the word "process," a writ or summons issued in the course of judicial proceedings.

Seven—The word "vessel," when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

Eight—The term "peace officer" signifies any of the officers mentioned in section eight hundred and seventeen of the Penal Code.

Nine—The term "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of the Penal Code.

Ten—The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories. [Approved March 30; in effect *July 6*, 1874.]

Similar provisions—in Civil Code, § 14; Code Civ. Proc., § 17; Penal Code, § 7.

Special signification of terms—"Person" includes corporation, 4 Cal. 204; Signature may be printed, etc., 48 Cal. 565; 49 Cal. 413; Signature to petition, 49 Cal. 563; subd. 1, "Property," in Constitution Cal., 1849, did not include credits, 51 Cal. 244; *contra*, 43 Cal. 331; subd. 3, "Personal property," includes evidences of debt and choses in action, but not for purposes of taxation, 51 Cal. 244; subd. 4, "Month" means calendar month, 21 Cal. 392; 31 Cal. 173; 32 Cal. 347. Words used in connection with boundaries, §§ 3903–3908.

18. No statute, law, or rule is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code all statutes, laws, and rules heretofore in force in this State, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided; nor does it affect any private statute not expressly repealed.

Same provision—in Civil Code, § 20, and Code Civ. Proc., § 18.

Acts not repealed by Codes—47 Cal. 127; 53 Cal. 571.

Repealing statutes—and repeals generally, §§ 327–329, 4504, 4505; 2 Cal. 319; 8 Cal. 376; 15 Cal. 294; 19 Cal. 501; 20 Cal. 94, 677; 31 Cal. 122; 47 Cal. 502; 49 Cal. 353; 54 Cal. 319; Hib. S. & L. Soc. v. Jordan, 5 P. C. L. J. 381.

Repeals by implication—not favored, but occur where subsequent statute is repugnant to first, or intended as revision or substitute, 7 Cal. 419; 10 Cal. 315; 18 Cal. 439; 28 Cal. 254; 39 Cal. 3; 40 Cal. 419; 43 Cal. 560; 46 Cal. 97; 49 Cal. 273; 53 Cal. 413, 573.

Conflicting enactments—see under Construction of statutes, § 4*n*. Amendments, see under same note.

Statutes continued in force—§ 19, and notes.

Revival of repealed act—see § 325*n*.

Accrued right, etc.—see § 8*n*.

19. Nothing in either of the four Codes affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the Codes, except so far as they have been repealed or affected by subsequent laws:

1. All Acts incorporating or chartering municipal corporations, and Acts amending or supplementing such Acts;
2. All Acts consolidating cities and counties, and Acts amending or supplementing such Acts;
3. All Acts for funding the State debt, or any part thereof, and for issuing State bonds, and Acts amending or supplementing such Acts;
4. All Acts *regulating and in relation* to rodeos;
5. *All Acts in relation to Judges of* the Plains;

6. All Acts creating or regulating Boards of Water Commissioners and Overseers in the several townships or counties of the State;

7. All Acts in relation to a Branch State Prison;

8. An Act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight;

9. An Act for the suppression of Chinese houses of ill fame, approved March thirty-first, eighteen hundred and sixty-six;

10. An Act relating to the Home of the Inebriate of San Francisco, and to prescribe the powers and duties of the Board of Managers and the officers thereof, approved April first, eighteen hundred and seventy;

11. An Act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six;

12. An Act to prevent the destruction of fish in the waters of Bolinas Bay, in Marin County, approved March thirty-first, eighteen hundred and sixty-six;

13. An Act concerning trout in Siskiyou County, approved April second, eighteen hundred and sixty-six;

14. An Act to prevent the destruction of fish in Napa River and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight;

15. An Act to prevent the destruction of fish and game in, upon, and around the waters of Lake Merritt, or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy;

16. An Act to regulate salmon fisheries in Eel River, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine;

17. An Act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey and Mariposa, approved March twentieth, eighteen hundred and sixty-six;

18. An Act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one;

19. An Act concerning oyster beds, approved April second, eighteen hundred and sixty-six;

20. An Act concerning gas companies, approved April fourth, eighteen hundred and seventy;

21. An Act to empower the Board of Supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties, approved April fourth, eighteen hundred and seventy;

22. An Act supplemental to the Act mentioned in the preceding subdivision, approved April fourth, eighteen hundred and seventy;

23. All Acts in relation to lawful fences, estrays, and the trespassing of animals upon private property;

24. An Act for the relief of insolvent debtors and the protection of creditors, approved May fourth, eighteen hundred and sixty-two, and the Acts amending and supplementing such Act;

25. All Acts in relation to taxation for local purposes.

26. All Acts dividing counties into collection and assessment districts;

27. All Acts allowing county or city and county officers to appoint deputies, clerks and subordinate officers, in so far as such Acts authorize the appointment and fix the compensation of such deputies, clerks and subordinate officers.

Similar provisions—in Penal Code, § 23.

Acts remaining in force under Codes—costs in criminal cases, 49 Cal. 372. Fees of officers in San Francisco, 50 Cal. 117. Licenses in San Francisco, 53 Cal. 571. Lien on live stock, 53 Cal. 351. Percentage in San Francisco, 49 Cal. 396. Police Court of San Francisco, 47 Cal. 128.

STATUTES CONTINUED IN FORCE BY CODES.

Code Commissioners' volume—not authority, 49 Cal. 392.
Further instances—of continued statutes; see §§ 697, 1415, subd. 4, 3448, 4331, 4442.

SUBDIVISION 1. **Charters of municipal corporations**—Sacramento county not covered by term "municipal corporation," 45 Cal. 692. Revenue provisions of this Code still applicable to San Francisco, 46 Cal. 481, 483. Salary of Sheriff of San Francisco provided for by act continued by this subdivision, 50 Cal. 118. Licenses in San Francisco, act as to collection of, not abrogated by Codes, 53 Cal. 572.

SUBDIVISION 2. **Consolidation acts**—San Francisco consolidation act controlled by Political Code as to revenue, 46 Cal. 481, 483. San Francisco license act not repealed by Codes, 53 Cal. 572.

SUBDIVISION 4. **Rodeos**—original act in Stats. 1851, p. 445; amd. by Stats. 1852, p. 102; 1858, p. 70; 1861, p. 180; 1866, p. 73; special repeal, Stats. 1855, p. 163. Supplemental act, Stats. 1858, p. 155. Amendatory and supplemental act, Stats. 1866, p. 673; special repeal, Stats. 1874, p. 793.

SUBDIVISION 5. **Judges of the plains**—Stats. 1851, p. 515; amd. Stats. 1857, p. 158; 1863, p. 497.

SUBDIVISION 6. **Water Commissioners**—general law, Stats. 1854, p. 180; amd. Stats. 1857, p. 31; 1860, p. 335; 1861, p. 31; 1862, p. 235. For special acts, see Stats. 1857, p. 63; 1859, p. 217; 1860, p. 182; 1864, pp. 87, 167, 775; 1866, pp. 313, 314, 609; 1870, p. 702; 1874, p. 312; 1876, pp. 486, 547, 731, 885.

SUBDIVISION 7. **Branch State Prison**—chief acts, Stats. 1858, p. 259, and Stats. 1868, p. 267; but see act in Stats. 1874, p. 785; also Stats. 1878, p. 884, and Stats. 1880, p. 191 or 39.

SUBDIVISION 8. **Prevention of cruelty to animals**—Stats. 1868, p. 604; and Stats. 1872, p. 393; but see repealing clause of act in Stats. 1874, p. 499.

SUBDIVISION 9. **Chinese houses of ill-fame**—Stats. 1866, p. 641; but see amdt. Stats. 1874, p. 84.

SUBDIVISION 10. **Home of Inebriates**—Stats. 1870, p. 585; see also act in Stats. 1876, p. 325.

SUBDIVISION 11. ***Marks and brands***—*in* Siskiyou county, Stats. 1866, p. 352

SUBDIVISION 12. **Fish in Bolinas Bay**—Stats. 1866, p. 637.

SUBDIVISION 13. **Trout in Siskiyou County**—Stats. 1866, p. 857.

SUBDIVISION 14. **Fish in Napa River, etc.**—Stats. 1868, p. 13; amd. Stats. 1871, p. 441.

SUBDIVISION 15. **Lake Merritt fish and game**—Stats. 1870, p. 325.

SUBDIVISION 16. **Eel River salmon fisheries**—Stats. 1859, p. 298.

SUBDIVISION 17. **Stock-raisers**—Stats. 1866, p. 322.

SUBDIVISION 18. **Oysters**—Stats. 1851, p. 432; but see repealing clause of act in Stats. 1874, p. 940.

SUBDIVISION 19. **Oyster beds**—Stats. 1866, p. 848; but see repealing clause of act in Stats. 1874, p. 940.

SUBDIVISION 20. **Gas company franchises**—Stats. 1870, p. 815.

SUBDIVISION 21. **Aid to railroads**—Stats. 1870, p. 746; see repealing acts, Stats. 1872, p. 44; 1874, p. 26.

SUBDIVISION 22. **Act supplemental to foregoing**—Stats. 1870, p. 744; see repealing acts, Stats. 1872, p. 44; 1874, p. 26.

SUBDIVISION 23. **Estrays**—act concerning, how harmonized with Civil Code, 51 Cal. 297.

SUBDIVISION 24. **Insolvency**—original act in Stats. 1852, p. 69; amd., Stats. 1858, p. 58 ; 1860, p. 283; 1863, p. 750; supplementary act, Stats. 1876, p. 581: insolvent act of 1880, Stats. 1880, p. 316 or 82.

SUBDIVISION 25. **Collection of Licenses**—in San Francisco, act concerning not repealed or abrogated by Codes, 53 Cal. 572.

20. This Act, whenever cited, enumerated, referred to, or amended, may be designated simply as THE POLITICAL CODE, adding, when necessary, the number of the section.

PART I.

OF THE SOVEREIGNTY AND PEOPLE OF THE STATE, AND OF THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION:

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PART I.

OF THE SOVEREIGNTY AND PEOPLE OF THE STATE, AND OF THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

TITLE I. SOVEREIGNTY OF THE STATE.
II. PERSONS COMPOSING THE PEOPLE OF THE STATE.
III. POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO THE JURISDICTION OF THE STATE.

TITLE I.

Sovereignty of the State.

CHAPTER I. RESIDENCE OF SOVEREIGNTY.
II. TERRITORIAL JURISDICTION OF THE STATE.
III. GENERAL RIGHTS OF THE STATE OVER PERSONS.
IV. GENERAL RIGHTS OF THE STATE OVER PROPERTY.

CHAPTER I.

Residence of Sovereignty.

§ 30. Sovereignty resides in the people.

30. The sovereignty of the State resides in the people thereof, and all writs and processes must issue in their name.

People of State—political supremacy of; see Const. Cal., art. 1, § 2. Rights of; see Const. Cal., art. 1, §§ 10, 19, 23.

Style of process—see Const. Cal., art. 6, § 20. Prosecutions in name of people; see Const. Cal., art. 6, § 20; 47 Cal. 478.

State sovereignty—4 Cal. 46; 9 Cal. 720; 13 Cal. 183; 17 Cal. 219; 32 Cal. 366; 40 Cal. 198. State inseparable part of Union, Const. Cal., art. 1, § 3. Federal Constitution supreme law of land, *Ib.*

CHAPTER II.

Territorial Jurisdiction of the State.

§ 33. Territorial jurisdiction; limitations on.
§ 34. Purchase, etc., of lands by United States for public use.

33. The sovereignty and jurisdiction of this State extends to all places within its boundaries as established by the Constitution; but the extent of such jurisdiction over places that have been or may be ceded to, purchased or condemned by the United States, is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made.

Boundary of State—Const. Cal., art. 21, § 1. Admission of States, Const. U. S., art. 4, § 3.

Purchase or condemnation by United States—see § 34.

34. The Legislature consents to the purchase or condemnation by the United States of any tract of land within this State for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, upon the express condition that all civil process issued from the Courts of this State, and such criminal process as may issue under the authority of this State, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made.

Basis of section—Stats. 1852, p. 149; compare Const. U. S., art. 1, § 8.

Lighthouses—and other aids to navigation, submarine sites for; see Stats. 1874, p. 621.

CHAPTER III.

General Rights of the State over Persons.

§ 37. Rights over persons enumerated.

37. The State has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime;
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;
3. To imprison or confine for the purpose of enforcing civil remedies;
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind;
5. To establish custody and restraint of paupers for the purpose of their maintenance;
6. To establish custody and restraint of minors unprovided for by natural guardians, for the purposes of their education, reformation and maintenance;
7. To require services of persons, with or without compensation: In military duty; in jury duty; as witnesses; as town or village officers; in highway labor; in maintaining the public peace; in enforcing the service of process; in protecting life and property from fire, pestilence, wreck and flood; and in such other cases as are provided by statute.

Rights over persons—extend to those within its limits only, 53 Cal. 642. Declaration of rights of people, Const. Cal., art. 1, §§ 1-24.

Police powers of State—see §§ 2949-3387. Exclusion of paupers, etc., permissible, 42 Cal. 578.

CHAPTER IV.

General Rights of the State over Property.

§ 40. Original and ultimate title.
§ 41. Property escheats, when.
§ 42. Intruders on public lands of the State.
§ 43. Acquisition by taxation and assessment.
§ 44. By right of eminent domain.

40. The original and ultimate right to all property, real and personal, within the limits of this State, is in the people thereof.

Ownership of property—by State, Civil Code, § 669.

Property escheats—when, § 41.

41. All property, real and personal, within the limits of this State, which does not belong to any person, belongs to the people. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the people.

Lands owned by State—Civil Code, § 670.

Waste or ungranted lands of State—removal of intruder upon, § 42.

Escheated estates—see Code Civ. Proc., §§ 1269-1272. Non-resident aliens, rights in general, 2 Cal. 558; 5 Cal. 373, 381; 6 Cal. 250; 12 Cal. 450; 13 Cal. 159; 18 Cal. 217; 26 Cal. 455; 32 Cal. 376; unclaimed realty of, escheats to State, Civil Code, §§ 672, 1404-5; 5 Cal. 373; 13 Cal. 159; My. P. R. 19. Duty of Controller as to, § 437. Duty of Attorney-General as to, § 474.

42. If any person, under any pretense of any claim inconsistent with the sovereignty and jurisdiction of the State, intrudes upon any of the waste or ungranted lands of the State, the District Attorney of the county must immediately report the same to the Governor, who must thereupon, by a written order, direct the Sheriff of the county to remove the intruder; and if resistance to the execution of the order is made or threatened, the Sheriff may call to his aid the power of the county, as in cases of resistance to the writs of the people.

Sovereignty and Jurisdiction of State—§ 33.

Sheriff of the county—duties, liabilities, etc., §§ 4175-4193; may call to his aid the power of the county; see § 4176, subd. 5.

43. The State may acquire property by taxation in the modes authorized by law.

Revenue and taxation—Const. Cal., art. 13, §§ 1-13; see Desty's *Const. Cal. 336-355; also this Code, §§ 3607-3990.*

44. It may acquire or authorize others to acquire title t property, real or personal, for public use, in the cases and i the mode provided in Title VII., Part III., of THE CODE o CIVIL PROCEDURE.

Eminent domain—see Code Civ. Proc., §§ 1237-1263; also Desty's Const. Cal. 194-199. Generally, Civil Code, § 1001; Desty's Const. Cal. 194; nature of right, 18 Cal. 229; power of court, 47 Cal. 70; public necessity, 18 Cal. 229; 51 Cal. 269; enumerated uses, 51 Cal. 269. Corporations subject to, Const. Cal., art. 12, § 8. Water frontages, subject to, Const. Cal., art. 15, § 1.

Compensation—obligatory, generally, 3 Cal. 69; 4 Cal. 414; 14 Cal. 106; 16 Cal. 153, 248; 18 Cal. 229; 19 Cal. 47; 22 Cal. 251, 434; 23 Cal. 323; 24 Cal. 427; 27 Cal. 171, 613; 28 Cal. 345, 662; 31 Cal. 215, 406; 32 Cal. 241, 500; 43 Cal. 79; 47 Cal. 541; 51 Cal. 577; 54 Cal. 430; further see Desty's Const. Cal. 197. Before possession, payment required, by Const. Cal., art. 1, § 14; see also 54 Cal. 324; previous rulings to similar effect, 4 Cal. 116; 7 Cal. 121, 577; 9 Cal. 595; 12 Cal. 500; 13 Cal. 306; 14 Cal. 106; 29 Cal. 112; 44 Cal. 52; 47 Cal. 517; 50 Cal. 284; 51 Cal. 266; 53 Cal. 208; but held otherwise in 31 Cal. 638.

TITLE II.

Persons Composing the People of the State.

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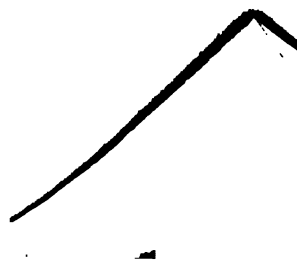

TITLE II.

Persons Composing the People of the State.

§ 50. Who are the people.
§ 51. Who are citizens.
§ 52. Residence, rules for determining.

50. The people, as a political body, consist:
1. Of citizens who are electors;
2. Of citizens not electors.

Electors—eligibility to office, § 58; rights and duties, § 59; qualifications and disabilities of, §§ 1083, 1084; registration of, §§ 1094-1117

Elections—§§ 1041-1365.

51. The citizens of the State are:
1. All persons born in this State and residing within it, except the children of transient aliens and of alien public ministers and consuls;
2. All persons born out of this State who are citizens of the United States and residing within this State.

Residence—rules for determining, § 52.

Citizens—allegiance of, §§ 55, 56; when qualified electors, §§ 1083, 1084.

Persons not citizens—§§ 57, 60, also § 54.

Subdivision 2. Citizens of the United States — naturalization laws; see Revised Stats. U. S. §§ 2165-2174. Naturalization papers, where procured; see Const. Cal., art. 6, § 5. Decisions concerning naturalization. 5 Cal. 300; 22 Cal. 83; 39 Cal. 98. Declaration of intention may be made before Clerk as well as Court; see 19 U. S. Stats., p. 2, amdt. approved Feb. 1, 1876.

52. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:
1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can only be one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor child;
5. The residence of the husband is the residence of the wife;
6. The residence of an unmarried minor who has a parent ... cannot be changed by either his own act or that of his

7. The residence can be changed only by the union of act and intent.

Residence for purposes of voting—rules for determining, § 1239.

Absence from State—on official business, does not affect question of residence, Const. Cal., art. 20, § 12.

Resident foreigners—if eligible to citizenship, etc., secured in their property rights, Const. Cal., art. 1, § 17.

RULES FOR DETERMINING PLACE OF RESIDENCE.

SUBDIVISION 1. Permanent abode—homestead, residence requisite for, Civil Code, § 1237; 6 Cal. 625; 7 Cal. 89, 245; 33 Cal. 220; 35 Cal. 319; 41 Cal. 83; 45 Cal. 58; 52 Cal. 629, 630.

SUBDIVISION 4. Residence of unmarried minor—compare subd. 6 and note.

SUBDIVISION 5. Same residence for wife—as for husband. Divorce, rule inapplicable to actions for; see Civil Code, § 129. Right of husband to select wife's residence, Civil Code, §§ 103, 104, 156. Length of residence required for divorce, Civil Code, § 128.

SUBDIVISION 6. Residence of unmarried minor—power of guardian to fix residence of ward, Civil Code, § 248. When parent may change residence of child, Civil Code, § 213.

TITLE III.

Political Rights and Duties of all Persons Subject to the Jurisdiction of the State.

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TITLE III.

Political Rights and Duties of all Persons Subject to the Jurisdiction of the State.

§ 54. All persons within the State subject to its jurisdiction.
§ 55. Allegiance.
§ 56. Allegiance may be renounced.
§ 57. Persons not citizens.
§ 58. Eligibility to office.
§ 59. Rights and duties of citizens not electors.
§ 60. Rights and duties of citizens of other States.

54. Every person while within this State is subject to its jurisdiction and entitled to its protection.

Rights of the State over Persons—within its limits, § 37.

Popular rights—see Declaration of rights, Const. Cal., art. 1, §§ 1-24; Desty's Const. Cal. 177-217. General personal rights, Civil Code, § 43.

55. Allegiance is the obligation of fidelity and obedience which every citizen owes to the State.

56. Allegiance may be renounced by a change of residence.

Residence—rules for determining place of, § 52.

57. Persons in the State not its citizens are either:

1. Citizens of other States; or,
2. Aliens.

SUBDIVISION 1. Citizens of other States—see § 60.

SUBDIVISION 2. Aliens—resident, control of property by, Const. Cal., art. 1, § 17. Non-resident, general rights and unclaimed realty of; see under Escheated estates, § 41*a*. Naturalization of; see under Citizens of the United States, note to subd. 2, § 51. Children of transient, etc., born in this State, § 51, subd. 1.

58. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided; and no person is eligible who is not such an elector.

Qualified elector—who is, § 1083.

Ineligible to office—persons who are, §§ 841, 842. Women eligible to educational offices; see Stats. 1874, p. 356.

59. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

Holding office—see Ineligible to office, § 58a.
Electing to office—see on Elections, §§ 1041–1365.

60. A citizen of the United States, who is not a citizen of this State, has the same rights and duties as a citizen of this State not an elector.

Citizenship—effect of fourteenth and fifteenth amendments to Federal Constitution on, 43 Cal. 43.

PART II.

OF THE CHIEF POLITICAL DIVISIONS, THE SEAT OF GOVERNMENT, AND LEGAL DISTANCES OF THE STATE.

TITLE I.

Chief Political Divisions of the State.

CHAPTER I. COUNTIES.
II. SENATORIAL DISTRICTS.
III. CONGRESSIONAL DISTRICTS.
IV. JUDICIAL DISTRICTS.

CHAPTER I.

75. The State is divided into counties: the names, boundaries and territorial subdivisions thereof are as declared in Part IV of this Code.

CHAPTER II.

Senatorial Districts.

§§ **78** to **106** were superseded by an Act entitled "*An Act to define the Senatorial and Assembly Districts of this State, and to apportion the representation thereof.*"

SECTION 1. The Counties of San Diego and San Bernardino shall be the First Senatorial District, and shall elect one Senator; and each of said counties shall elect one member of the Assembly.

SEC. 2. The County of Los Angeles shall be the Second Senatorial District, and shall elect one Senator and two members of the Assembly.

SEC. 3. The Counties of Ventura, Santa Barbara, and San Luis Obispo, shall be the Third Senatorial District, and shall elect one Senator; Ventura and Santa Barbara, jointly, shall elect one member of the Assembly, and San Luis Obispo shall elect one member of the Assembly.

SEC. 4. The Counties of Tulare, Inyo, Fresno, Mono, and Kern, shall be the Fourth Senatorial District, and shall elect one Senator; Fresno shall elect one member of the Assembly, Tulare and Kern shall elect jointly one member of the Assembly, and Mono and Inyo shall elect jointly one member of the Assembly.

SEC. 5. The Counties of Mariposa, Merced, and Stanislaus, shall be the Fifth Senatorial District, and shall elect one Senator; Mariposa and Merced shall jointly elect one member of the Assembly, and Stanislaus shall elect one member of the Assembly.

SEC. 6. The Counties of Santa Cruz, Monterey, and San Benito, shall be the Sixth Senatorial District, and shall elect jointly one Senator; and each of said counties shall elect one member of the Assembly.

SEC. 7. The County of Santa Clara shall be the Seventh Senatorial District, and shall elect two Senators and three members of the Assembly.

SEC. 8. The City and County of San Francisco, and the County of San Mateo, shall be the Eighth Senatorial District, and shall elect one Senator; the County of San Mateo shall elect one member of the Assembly.

SEC. 9. That portion of the City and County of San Francisco, bounded and described as follows, to wit: Commencing at a point where the southerly line of United States military reservation, known as the "Presidio Reservation," intersects with the waters of the Pacific Ocean; thence meandering along the waters of said ocean and the waters of the Bay of San Francisco, northerly, easterly, and southerly, to the point where Washington street intersects with said bay; thence westerly, along said Washington street, to its intersection with First Avenue; thence northerly, along said avenue, to its intersection with the southerly boundary line of the said "Presidio Reservation;" thence westerly, and along the southerly boundary line of said "Presidio Reservation" to its intersection with the Pacific Ocean and the point of beginning; shall be the Ninth Senatorial District, and shall elect two Senators and four members of the Assembly.

SEC. 10. That portion of the City and County of San Francisco, bounded and described as follows, to wit: Commencing at a point where the southerly boundary line of the "Presidio Reservation" intersects with the waters of the Pacific Ocean; thence easterly, and along the southerly boundary line of said "Presidio Reservation," to the point where First Avenue intersects with said boundary line; thence southerly, along said First Avenue, to the point where Washington street intersects with said First Avenue; thence easterly, along said Washington street, to its intersection with the waters of the Bay of San Francisco; thence southerly, along the line of said bay, to the point of intersection of Market street with said bay; thence westerly, along said Market street, to the point where Geary street intersects with said Market street; thence westerly, along said Geary street, to where it connects with the Point Lobos Toll Road; thence along said Point Lobos

Toll Road, and said toll road produced, in a direct line to the Pacific Ocean; thence northerly, along said ocean, to the point of beginning; shall be the Tenth Senatorial District, and shall elect two Senators and four members of the Assembly.

SEC. 11. That portion of the City and County of San Francisco, bounded and described as follows, to wit: Commencing at a point on the line of Market street where Fourth street intersects with said Market street; thence easterly and along said Market street to the waters of the Bay of San Francisco; thence southerly and southwesterly along the line of the waters of said bay, to a point where Fourth street intersects with said bay; thence northerly along the line of said Fourth street to the point of beginning; shall be the Eleventh Senatorial District, and shall elect two Senators and four members of the Assembly.

SEC. 12. That portion of the City and County of San Francisco, bounded and described as follows, to wit: Commencing at the intersection of Larkin and Geary streets, and running thence easterly along said Geary street to its intersection with Market street; thence southwesterly along the line of said Market street to the point of intersection of Fourth street with said Market street; thence southerly along said Fourth street to the point of its intersection with Channel street; thence southwesterly along said Channel street to the point of its intersection with Eighth street; thence northerly along said Eighth street to the point of its intersection with Market street; thence southwesterly along said Market street to the point of the intersection of Larkin street with said Market street; thence northerly along said Larkin street to the point of beginning; shall be the Twelfth Senatorial District, and shall elect two Senators and four members of the Assembly.

SEC. 13. That part of the City and County of San Francisco, bounded and described as follows, to wit: Commencing at a point where the Point Lobos Toll Road produced in a direct line westerly, intersects with the waters of the Pacific Ocean, and running thence easterly along said Point Lobos Toll Road to the point of its connection with Geary street; thence along said Geary street easterly to its intersection with Larkin street; thence southerly along said Larkin street to the point of its intersection with Market street; thence northeasterly along said Market street to the point where Eighth street intersects with said Market street; thence southeasterly along said Eighth street to its intersection with Channel street; thence northeasterly along said Channel street to the point of its intersection with Fourth street; thence southeasterly along said Fourth street to the point of its intersection with the Bay of San Francisco; thence southerly along the line of the waters of said bay to the point of intersection of

the boundary line between the City and County of San Francisco and the County of San Mateo with the waters of said bay; thence westerly along said boundary line to the point of its intersection with the Pacific Ocean; thence northerly along the line of said ocean to the point of beginning; shall be the Thirteenth Senatorial District, and shall elect two Senators and four members of the Assembly.

SEC. 14. The County of Alameda shall be the Fourteenth Senatorial District, and shall have two Senators and three members of the Assembly.

SEC. 15. The Counties of Contra Costa and Marin shall be the Fifteenth Senatorial District, and shall elect one Senator, and each of said counties shall elect one member of the Assembly.

SEC. 16. The Counties of San Joaquin and Amador shall be the Sixteenth Senatorial District; San Joaquin shall elect one Senator, and, jointly with Amador, shall elect one Senator; San Joaquin shall elect three members of the Assembly, and Amador shall elect two members of the Assembly.

SEC. 17. The Counties of Tuolumne and Calaveras shall be the Seventeenth Senatorial District, and shall elect one Senator, and each of said counties shall elect one member of the Assembly.

SEC. 18. The County of Sacramento shall be the Eighteenth Senatorial District, and shall elect two Senators and three members of the Assembly.

SEC. 19. The Counties of Solano and Yolo shall be the Nineteenth Senatorial District; Solano shall elect one Senator and two members of the Assembly; Yolo shall elect one member of the Assembly, and, jointly with Solano, shall elect one Senator.

SEC. 20. The Counties of Napa, Lake, and Sonoma, shall constitute the Twentieth Senatorial District, and shall elect one Senator; and Napa and Lake Counties shall each elect one member of the Assembly.

SEC. 21. The County of Sonoma shall be the Twenty-first Senatorial District, and shall elect one Senator and three members of the Assembly.

SEC. 22. The County of Placer shall be the Twenty-second Senatorial District, and shall elect one Senator and one member of the Assembly.

SEC. 23. The Counties of El Dorado and Alpine shall be the Twenty-third Senatorial District, and shall elect one Senator; the County of El Dorado shall elect one member of the Assembly; and the Counties of El Dorado and Alpine shall, jointly, elect one member of the Assembly.

SEC. 24. The Counties of Nevada and Sierra shall be the Twenty-fourth Senatorial District; Nevada shall elect one

Senator and three members of the Assembly; Sierra shall elect one member of the Assembly, and one Senator, jointly with Nevada.

SEC. 25. The Counties of Yuba and Sutter shall be the Twenty-fifth Senatorial District, and shall elect one Senator; Yuba shall elect two members of the Assembly, and Sutter shall elect one member of the Assembly.

SEC. 26. The Counties of Butte, Plumas, and Lassen, shall be the Twenty-sixth Senatorial District, and shall elect one Senator; Butte shall elect two members of the Assembly, and Plumas and Lassen shall, jointly, elect one member of the Assembly.

SEC. 27. The Counties of Mendocino, Humboldt, Klamath, and Del Norte, shall be the Twenty-seventh Senatorial District, and shall elect one Senator; Humboldt and Mendocino shall each elect one member of the Assembly, and Klamath and Del Norte shall, jointly, elect one member of the Assembly.

SEC. 28. The Counties of Siskiyou, Modoc, Trinity, and Shasta, shall be the Twenty-eighth Senatorial District, and shall elect, jointly, one Senator; Siskiyou and Modoc shall elect, jointly, one member of the Assembly; Trinity and Shasta shall elect, jointly, one member of the Assembly.

SEC. 29. The Counties of Colusa and Tehama shall be the Twenty-ninth Senatorial District, and shall elect one Senator and one member of the Assembly.

SEC. 30. At the general election to be held in the year eighteen hundred and seventy-five, and every four years thereafter, there shall be elected in the First, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Fourteenth, Fifteenth, Sixteenth, Eighteenth, Nineteenth, Twentieth, Twenty-seventh, and Twenty-ninth Districts, one Senator each, and in the Twelve and Thirteenth Districts, two Senators each.

SEC. 31. At the general election to be held in the year eighteen hundred and seventy-seven, and every four years thereafter, there shall be elected in the Second, Third, Fourth, Seventh, Ninth, Tenth, Eleventh, Fourteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twenty-first, Twenty-second, Twenty-third, Twenty-fifth, Twenty-sixth, and Twenty-eighth Districts, one Senator each, and in the Twenty-fourth District, two Senators.

SEC. 32. At the general election to be held in the year eighteen hundred and seventy-five, and every two years thereafter, members of the Assembly shall be elected in the several districts and counties of the State as is provided in this Act.

SEC. 33. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed. [Approved March 16, 1874. Stats. 1873-4, p. 366.]

The Present Constitution—provides for apportionment, in art. 4, § 6, and §§ 3-5 of that article cover the ground embraced by Sections *30-32 of the above Act.*

CHAPTER III.

Congressional Districts.

§ 117 was superseded by Act entitled "*An Act to divide the State into Congressional Districts.*"

SECTION 1. For the purpose of electing Representatives to the Congress of the United States, the State is hereby divided into districts, as follows:

SEC. 2. The First District shall be composed of the City and County of San Francisco.

SEC. 3. The Second District shall be composed of the Counties of Contra Costa, Alameda, San Joaquin, Calaveras, Amador, El Dorado, Sacramento, Placer, Nevada, Alpine, and Tuolumne.

SEC. 4. The Third District shall be composed of the Counties of Marin, Sonoma, Napa, Lake, Solano, Yolo, Sutter, Yuba, Sierra, Butte, Plumas, Lassen, Tehama, Colusa, Mendocino, Humboldt, Trinity, Shasta, Siskiyou, Klamath, and Del Norte.

SEC. 5. The Fourth District shall be composed of the Counties of San Diego, Los Angeles, San Bernardino, Santa Barbara, San Luis Obispo, Tulare, Monterey, Fresno, Kern, Merced, Mariposa, Stanislaus, Santa Clara, Santa Cruz, San Mateo, Mono, and Inyo. [In effect March 30, 1872. Stats. 1871-2, p. 714.]

CHAPTER IV.

Judicial Districts.

Chapter Four of Title One, Part Two, of the Political Code, and all other laws and parts of laws creating judicial districts in this State, defining boundaries thereof, or providing terms of Courts therein, are hereby repealed. [In effect February 13, 1880. Stats. *1880, p. 1, Ban. Ed., p. 5.*]

Repealed Chapter—comprised §§ 125-142. Repeal conformed to *Const. Cal. 1879, art 22, § 3.*

TITLE II.

Seat of Government.

§ 145. Located at Sacramento.

145. The seat of Government of this State is at the city of Sacramento.

Seat of Government—Sacramento declared to be, 5 Cal. 23; see Const. Cal. art. 20, § 1. Act prohibiting sale of liquors in State Capitol building, Stats. 1880, p. 273 or 80. Employees of Capitol grounds, Stats. 1880, p. 346 or 107.

TITLE III.

Legal Distances in the State.

Title III., Part II., is hereby amended so as to read as follows: [Approved and in effect April 3, 1876.]

§ 150. Legal distances.
§ 151. From Alameda County seat.
§ 152. From Alpine County seat.
§ 153. From Amador County seat.
§ 154. From Butte County seat.
§ 155. From Calaveras County seat.
§ 156. From Colusa County seat.
§ 157. From Contra Costa County seat.
§ 158. From Del Norte County seat.
§ 159. From El Dorado County seat.
§ 160. From Fresno County seat.
§ 161. From Humboldt County seat.
§ 162. From Inyo County seat.
§ 163. From Kern County seat.
§ 164. From Lake County seat.
§ 165. From Lassen County seat.
§ 166. From Los Angeles County seat.
§ 167. From Marin County seat.
§ 168. From Mariposa County seat.
§ 169. From Mendocino County seat.
§ 170. From Merced County seat.
§ 171. From Modoc County seat.
§ 172. From Mono County seat.
§ 173. From Monterey County seat.
§ 174. From Napa County seat.
§ 175. From Nevada County seat.
§ 176. From Placer County seat.
§ 177. From Plumas County seat.
§ 178. From Sacramento County seat.
§ 179. From San Benito County seat.
§ 180. From San Bernardino County seat.
§ 181. From San Diego County seat.
§ 182. From San Francisco County seat.
§ 183. From San Joaquin County seat.
§ 184. From San Luis Obispo County seat.
§ 185. From San Mateo County seat.
§ 186. From Santa Barbara County seat.
§ 187. From Santa Clara County seat.
§ 188. From Santa Cruz County seat.
§ 189. From Shasta County seat.
§ 190. From Sierra County seat.
§ 191. From Siskiyou County seat.
§ 192. From Solano County seat.
§ 193. From Sonoma County seat.
§ 194. From Stanislaus County seat.
§ 195. From Sutter County seat.
§ 196. From Tehama County seat.
§ 197. From Trinity County seat.
§ 198. From Tulare County seat.
§ 199. From Tuolumne County seat.
§ 200. From Ventura County seat
§ 201. From Yolo County seat.
§ 202. *From Yuba County seat.*
§ 202. *Mileage, how computed.*

150. The legal distances in this State are fixed as follows

Legal distances—basis of mileage, § 203. Inapplicable to service notices, 23 Cal. 152.

151. From the county seat of Alameda County to Sacramento, ninety-one (91) miles; to Napa, forty-six (46) miles; to Stockton, eighty-five (85) miles; to San Quentin, nineteen (19) miles.

152. From the county seat of Alpine County to Sacramento, two hundred and twenty-five (225) miles; to Napa, two hundred and eighty-six (286) miles; to Stockton, two hundred and seventy-three (273) miles; to San Quentin, three hundred and twenty-one (321) miles.

153. From the county seat of Amador County to Sacramento, fifty-nine (59) miles; to Napa, one hundred and ten (110) miles; to Stockton, fifty seven (57) miles; to San Quentin, one hundred and forty-five (145) miles.

154. From the county seat of Butte County to Sacramento, seventy-eight (78) miles; to Napa, one hundred and thirty-nine (139) miles; to Stockton, one hundred and twenty-six (126) miles; to San Quentin, one hundred and seventy-four (174) miles.

155. From the county seat of Calaveras County to Sacramento, seventy-three (73) miles; to Napa, one hundred and thirty-four (134) miles; to Stockton, sixty (60) miles; to San Quentin, one hundred and sixty-four (164) miles.

156. From the county seat of Colusa County to Sacramento, eighty (80) miles; to Napa, one hundred and forty-one (141) miles; to Stockton, one hundred and twenty-eight (128) miles; to San Quentin, one hundred and seventy-six (176) miles.

157. From the county seat of Contra Costa County to Sacramento, eighty-nine (89) miles; to Napa, twenty-seven (27) miles; to Stockton, one hundred and twenty-one (121) miles; to San Quentin, forty-one (41) miles. [In effect March 14, 1878.]

158. From the county seat of Del Norte County to Sacramento, three hundred and sixty-four (364) miles; to Napa, three hundred and nineteen (319) miles; to Stockton, three hundred and seventy-two (372) miles; to San Quentin, two hundred and ninety-two (292) miles.

159. From the county seat of El Dorado County to Sacramento, sixty-one (61) miles; to Napa, one hundred and twenty-two (122) miles; to Stockton, one hundred and nine (109) miles; to San Quentin, one hundred and fifty-seven (157) miles.

160. From the county seat of Fresno County to Sacramento, one hundred and sixty-nine (169) miles; to Napa, two hundred and thirty (230) miles; to Stockton, one hundred and thirteen (113) miles; to San Quentin, two hundred and seven (207) miles.

161. From the county seat of Humboldt County to Sacramento, three hundred and twelve (312) miles; to Napa, two hundred and sixty-seven (267) miles; to Stockton, three hundred and twenty (320) miles; to San Quentin, two hundred and forty (240) miles.

162. From the county seat of Inyo County to Sacramento, four hundred and seventy-one (471) miles; to Napa, five hundred and thirty-two (532) miles; to Stockton, four hundred and twenty-three (423) miles; to San Quentin, five hundred and eight (508) miles.

163. From the county seat of Kern County to Sacramento, two hundred and seventy-eight (278) miles; to Napa, three hundred and thirty-nine (339) miles; to Stockton, two hundred and thirty (230) miles; to San Quentin, three hundred and fifteen (315) miles.

164. From the county seat of Lake County to Sacramento, two hundred and four (204) miles; to Napa, one hundred and fifty-nine (159) miles; to Stockton, two hundred and twelve (212) miles; to San Quentin, one hundred and thirty-two (132) miles.

165. From the county seat of Lassen County to Sacramento, one hundred and eighty-three (183) miles; to Napa, two hundred and forty-four (244) miles; to Stockton, two hundred and thirty-one (231) miles; to San Quentin, two hundred and seventy-nine (279) miles.

166. From the county seat of Los Angeles County to Sacramento, four hundred and seventy-eight (478) miles; to Napa, four hundred and thirty-three (433) miles; to Stockton, four hundred and eighty-six (486) miles; to San Quentin, four hundred and six (406) miles.

167. From the county seat of Marin County to Sa mento, ninety-six (96) miles; to Napa, fifty-one (51) mi to Stockton, one hundred and four (104) miles; to San Qu tin, three (3) miles.

168. From the county seat of Mariposa County to Sac mento, one hundred and fifty-six (156) miles; to Napa, t hundred and seventeen (217) miles; to Stockton, one hundr and nine (109) miles; to San Quentin, one hundred and nin ty-three (193) miles.

169. From the county seat of Mendocino County to Sa ramento, two hundred and five (205) miles; to Napa, one hun dred (100) miles; to Stockton, two hundred and thirteen (213 miles; to San Quentin, one hundred and thirty-three (133 miles.

170. From the county seat of Merced County to Sacramento, one hundred and fourteen (114) miles; to Napa, one hundred and seventy-five (175) miles; to Stockton, sixty-six (66) miles; to San Quentin, one hundred and fifty-two (152) miles.

171. From the county seat of Modoc County to Sacramento, three hundred and seventy-nine (379) miles; to Napa, four hundred and forty (440) miles; to Stockton, four hundred and twenty-seven (427) miles; to San Quentin, four hundred and seventy-five (475) miles.

172. From the county seat of Mono County to Sacramento, two hundred and ninety-six (296) miles; to Napa, three hundred and fifty-seven (357) miles; to Stockton, three hundred and forty-four (344) miles; to San Quentin, three hundred and ninety-two (392) miles.

173. From the county seat of Monterey County to Sacramento, one hundred and ninety-six (196) miles; to Napa, one hundred and fifty-seven (157) miles; to Stockton, one hundred and forty-eight (148) miles; to San Quentin, one hundred and thirty (130) miles.

174. From the county seat of Napa county to Sacramento, sixty-one (61) miles; to Stockton, eighty-seven (87) miles; to San Quentin, fifty-one (51) miles.

175. From the county seat of Nevada County to Sacramento, seventy-one (71) miles; to Napa, one hundred and thirty-two (132) miles; to Stockton, one hundred and nineteen (119) miles; to San Quentin, one hundred and sixty-seven (167) miles.

176. From the county seat of Placer County to Sacramento, thirty-seven (37) miles; to Napa, ninety-eight (98) miles; to Stockton, eighty-five (85) miles; to San Quentin, one hundred and thirty-three (133) miles.

177. From the county seat of Plumas County to Sacramento, one hundred and thirty-six (136) miles; to Napa, one hundred and ninety-seven (197) miles; to Stockton, one hundred and eighty-four (184) miles; to San Quentin, two hundred and thirty-two (232) miles.

178. From the county seat of Sacramento County to Napa, sixty-one (61) miles; to Stockton, forty-eight (48) miles; to San Quentin, ninety-six (96) miles.

179. From the county seat of San Benito County to Sacramento, one hundred and seventy-three (173) miles; to Napa, one hundred and thirty-four (134) miles; to Stockton, one hundred and twenty-five (125) miles; to San Quentin, one hundred and seven (107) miles.

180. From the county seat of San Bernardino County to Sacramento, five hundred and eighty-eight (588) miles, to Napa, five hundred and forty-three (543) miles; to Stockton, five hundred and thirty (530) miles; to San Quentin, five hundred and sixteen (516) miles.

181. From the county seat of San Diego county to Sacramento, five hundred and sixty-six (566) miles; to Napa, five hundred and twenty-one (521) miles; to Stockton, five hundred and seventy-four (574) miles; to San Quentin, four hundred and ninety-four (494) miles. [In effect March 27, 1878.]

182. From the county seat of San Francisco County to Sacramento, eighty-four (84) miles; to Napa, thirty-nine (39) miles; to Stockton, ninety-two (92) miles; to San Quentin, twelve (12) miles.

183. From the county seat of San Joaquin County to Sacramento, forty-eight (48) miles; to Napa, eighty-seven (87) miles; to San Quentin, one hundred and four (104) miles.

184. From the county seat of San Luis Obispo County to Sacramento, two hundred and ninety-three (293) miles; to Napa, two hundred and forty-eight (248) miles; to Stockton, two hundred and eighty-seven (287) miles; to San Quentin, two hundred and twenty-one (221) miles.

185. From the county seat of San Mateo County to Sacramento, one hundred and five (105) miles; to Napa, sixty (6 miles; to Stockton, one hundred and thirteen (113) miles; San Quentin, thirty-three (33) miles.

186. From the county seat of Santa Barbara County Sacramento, three hundred and sixty-nine (369) miles; Napa, three hundred and twenty-four (324) miles; to Stock ton, three hundred and seventy-seven (377) miles; to Sa Quentin, two hundred and ninety-seven (297) miles.

187. From the county seat of Santa Clara County to Sacramento, one hundred and twenty-eight (128) miles; to Napa, eighty-nine (89) miles; to Stockton, eighty (80) miles; to San Quentin, sixty-two (62) miles.

188. From the county seat of Santa Cruz County to Sacramento, two hundred and five (205) miles; to Napa, one hundred and sixty (160) miles; to Stockton, one hundred and fifty-one (151) miles; to San Quentin, one hundred and thirty-three (133) miles.

189. From the county seat of Shasta County to Sacramento, one hundred and seventy-seven (177) miles; to Napa, two hundred and thirty-eight (238) miles; to Stockton, two hundred and twenty-five (225) miles; to San Quentin, two hundred and seventy-three (273) miles.

190. From the county seat of Sierra County to Sacramento, one hundred and nineteen (119) miles; to Napa, one hundred and seventy (170) miles; to Stockton, one hundred and sixty-seven (167) miles; to San Quentin, two hundred and fifteen (215) miles.

191. From the county seat of Siskiyou County to Sacramento, two hundred and eighty-five (285) miles; to Napa, three hundred and forty-six (346) miles; to Stockton, three hundred and thirty-three (333) miles; to San Quentin, three hundred and seventy-one (371) miles.

192. From the county seat of Solano County to Sacramento, forty (40) miles; to Napa, twenty-one (21) miles; to Stockton, eighty-eight (88) miles; to San Quentin, fifty-six (56) miles.

193. From the county seat of Sonoma County to Sacramento, one hundred and forty-one (141) miles; to Napa, thirty-five (35) miles; to Stockton, one hundred and forty-nine (149) miles; to San Quentin, sixty-nine (69) miles.

194. From the county seat of Stanislaus County to Sacramento, seventy-seven (77) miles; to Napa one hundred and thirty-eight (138) miles; to Stockton, thirty (30) miles; to San Quentin, one hundred and fourteen (114) miles.

195. From the county seat of Sutter County to Sacramento, fifty (50) miles; to Napa, one hundred and eleven (111) miles; to Stockton, ninety-eight (98) miles; to San Quentin, one hundred and forty-six (146) miles.

196. From the county seat of Tehama County to Sacramento, one hundred and thirty-five (135) miles; to Napa, one hundred and ninety-six (196) miles; to Stockton, one hundred and eighty-three (183) miles; to San Quentin, two hundred and thirty-one (231) miles.

197. From the county seat of Trinity County to Sacramento, two hundred and seventeen (217) miles; to Napa, two hundred and seventy-eight (278) miles; to Stockton, two hundred and sixty-five (265) miles; to San Quentin, three hundred and thirteen (313) miles.

198. From the county seat of Tulare County to Sacramento, two hundred and eleven (211) miles; to Napa, two hundred and seventy-two (272) miles, to Stockton, one hundred and sixty-three (163) miles; to San Quentin, two hundred and forty-nine (249) miles.

199. From the county seat of Tuolumne County to Sacramento, one hundred (100) miles; to Napa, one hundred and sixty-one (161) miles; to Stockton, sixty-six (66) miles; to San Quentin, one hundred and sixty-six (166) miles. [Approved February 15, 1878.]

200. From the county seat of Ventura County to Sacramento, three hundred and ninety-two (392) miles; to Napa, three hundred and forty-seven (347) miles; to Stockton, four hundred (400) miles; to San Quentin, three hundred and twenty (320) miles.

201. From the county seat of Yolo County to Sacramento, twenty (20) miles; to Napa, forty-one (41) miles; to Stockton, sixty-eight (68) miles; to San Quentin, ninety-two (92) miles.

202. From the county seat of Yuba County to Sacramento, fifty-two (52) miles; to Napa, one hundred and thirteen (113) miles; to Stockton, *one hundred (100)* miles; to San Quentin, *one hundred and forty-six (146)* miles.

203. When mileage is allowed by law to any pers distance must be computed as herein fixed.

Mileage—in various cases; see §§ 266, 397, 3793, 3867, 3871, 3876. length of, § 212.

[This Title, §§ 150–203, inclusive, was amended and in e April 3, 1876.]

PART III.

OF THE GOVERNMENT OF THE STATE.

[43]

PART III.

Of the Government of the State.

TITLE I. PUBLIC OFFICERS.
II. ELECTIONS.
III. EDUCATION.
IV. MILITIA.
V. PUBLIC INSTITUTIONS.
VI. PUBLIC WAYS.
VII. GENERAL POLICE OF THE STATE.
VIII. PROPERTY OF THE STATE.
IX. REVENUE OF THE STATE.

TITLE I.

Public Officers.

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CHAPTER I.

Classification of Public Officers.

§ 220. Classification of public officers.

220. The public officers of this State are classified as follows:

1. Legislative;
2. Executive;
3. Judicial;
4. Ministerial officers and officers of the Courts;

—But this classification is not to be construed as defining the legal powers of either class.

Public officers—presumptions in favor of. Regular appointment presumed; see Code Civ. Proc., § 1963, subd. 14, 3 Cal. 453; 5 Cal. 389; 6 Cal. 215; 16 Cal. 552; 24 Cal. 121; 53 Cal. 29. Regular performance of official duty and exercise of judicial powers, presumed, Code Civ. Proc. § 1963, subds. 15, 16; 1 Cal. 323; 3 Cal. 27, 192; 5 Cal. 53; 6 Cal. 81; 8 Cal. 384; 9 Cal. 554; 11 Cal. 248; 14 Cal. 117; 15 Cal. 530; 16 Cal. 227; 21 Cal. 291; 28 C. l. 133; 47 Cal. 43, 222, 294; 48 Cal. 133, 434, 483; 49 Cal. 229, 679; 50 Cal. 360; 51 Cal. 55, 146, 298, 447; 52 Cal. 171, 338, 664; 53 Cal. 239, 420; 54 Cal. 428, 480.

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CHAPTER II.

Legislative Officers.

ARTICLE I. DESIGNATION, TERM OF OFFICE, AND ELECTION OF MEMBERS.
II. MEETING AND ORGANIZATION OF THE LEGISLATURE.
III. NUMBER, DESIGNATION, ELECTION, AND APPOINTMENT OF OFFICERS AND EMPLOYEES OF THE LEGISLATURE.
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V. COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATURE.
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ARTICLE I.

NUMBER, DESIGNATION, TERM OF OFFICE, AND ELECTION OF MEMBERS OF THE LEGISLATURE.

§ 225. Number and designation.
§ 226. Term of office.
§ 227. Election of Senators.
§ 228. Same.
§ 229. Election of members of the Assembly.
§ 230. Apportionment of members of the Assembly.

225. The Legislature consists of:
1. Forty Senators; and,
2. Eighty members of the Assembly.

Legislature—of the State of California, legislative power vested in, Const. Cal., art. 4, § 1. Number of members, Const. Cal., art. 4, § 5.

POWER OF LEGISLATURE.

Appeals—to prescribe mode of making, 8 Cal. 297.

Assessments—to levy, 31 Cal. 240; 51 Cal. 15; 53 Cal. 45; 54 Cal. 536; to legalize, 25 Cal. 300; 53 Cal. 44; Schumacher v. Toberman, Jan. 5, 1881, 3 P. C. L. J. 997; to impose interest on, 47 Cal. 9.

Capital—to remove, 5 Cal. 24.

Cattle—as to impounding of, 49 Cal. 117.

City—as to funds for Agricultural Park in, 52 Cal. 196; see also Claim.

Claim—against city, not to create, 52 Cal. 150.

Commerce—not to regulate, 34 Cal. 492.

Constitutional—see Desty's Const. Cal. 408-410; also Constitutional Provisions and Constitutionality of Statutes, under Construction of Statutes, § 4a.

Corporations—to confer additional privileges on, Pierson v. Perrin, Dec. 20, 1880, 6 P. C. L. J. 861.

Courts—to prescribe rules for, 15 Cal. 476; 49 Cal. 465; not to require written reasons for decisions of, 13 Cal. 24; over jurisdiction of, see Jurisdiction.

Curative acts—to pass, 44 Cal. 323.

Delegation—of, when not permissible, 6 Cal. 143; 8 Cal. 378; 33 Cal. 279; 46 Cal. 477; 47 Cal. 480, 650; 48 Cal. 279, 490.

Eminent domain—as to exercise of right of, 51 Cal. 269.

Evidence—to control rules of, 51 Cal. 108.

Evil—to repress, 18 Cal. 678.

Examiners—to appoint Board of, 6 Cal. 361.

Excess—of, acts in, void, 7 Cal. 65; 16 Cal. 11.

Exclusive—franchises and privileges, to confer, 22 Cal. 398.

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Governmental—9 Cal. 502.

Impair obligations of contract—not to, 7 Cal. 347; 9 Cal. 341; 16 Cal. 30; and see Desty's Const. Cal. 204-206; 54 Cal. 41; see also note to § 4 on Retroactive statutes.

Improvements—on public lands, as to removal of, 48 Cal. 161; see also Local improvements.

Indebtedness—exceeding $300,000, as to incurring of, 6 Cal. 499.

Individual Liability—of stockholders over, 22 Cal. 370.

Infants—over property of, 50 Cal. 153; 51 Cal. 352.

Interest on legacies—over, 50 Cal. 244.

Invalid claims—to authorize payment of, 13 Cal. 343.

Investigating committee—within its own body, as to, 29 Cal. 395.

Judicial functions—not to exercise, 5 Cal. 73.

Jurisdiction—on Federal Courts, *not to confer*, 25 Cal. 604; of Supreme Court, *not to take away appellate*, 8 Cal. 297; of Justices of the

Peace, as to, 6 Cal. 447; to prescribe procedure in exercise of, 49 Cal. 467; not to confer on Courts, 5 Cal. 9, 43, 230; 6 Cal. 582; but see 22 Cal. 474.

Legalize assessment—to, 25 Cal. 300.

Limitations—of; see Restrictions upon.

Local and special laws—to enact, 17 Cal. 23, 547; 48 Cal. 493; but see Special laws, under Construction of statutes, § 4*a*., and Desty's Const. Cal. 257-263.

Local improvements—to compel, 47 Cal. 223.

Local option laws—as to, Desty's Const. Cal. 226.

Municipal corporations—over, 42 Cal. 446, 541.

Office—see Legislative control over offices, § 6*a*.

Property rights—as to, 18 Cal. 673.

Pueblo lands—to control sale of, 52 Cal. 155.

Redressing injuries—to regulate mode of, 7 Cal. 1.

Releasing judgment—as to, 12 Cal. 50.

Religion—as to matters touching, 18 Cal. 673.

Restrictions—upon: see Desty's Const. Cal. 225. Solely derived from Constitution, 16 Cal. 332; 33 Cal. 279; 35 Cal 624; Constitutional, 7 Cal. 65; 16 Cal. 11. Not to be imposed by courts as to political matters, 7 Cal. 65.

Revenue—as to, 9 Cal. 341; 34 Cal. 432; 46 Cal. 415; 47 Cal. 652; 51 Cal. 244; Wells, Fargo & Co. v. State Board of Equalization, Sept. 21, 1880, 6 P. C. L. J. 358, concurring opinion of Thornton, J.; see Assessment, Taxation.

Roads—as to improvement of, 50 Cal. 561.

Secretary of State—to impose services on, 51 Cal. 549.

State Board of Equalization—as to, 47 Cal. 646.

State officers—over, 47 Cal. 364.

Streets—over, 48 Cal. 490-91; 52 Cal. 270.

Taxation—as to, 2 Cal. 590; 4 Cal. 46; 7 Cal. 65, 400; 12 Cal. 76; 13 Cal. 175, 343; 16 Cal. 332; 29 Cal. 499; 35 Cal. 624; see also Assessment, Revenue.

Trusts—as to, 42 Cal. 541.

Validating judgments—as to, 50 Cal. 388; void street assessment, none, 53 Cal. 44.

War—to determine when exists, 23 Cal. 173; 27 Cal. 175.

Witnesses—over, §§ 300-304.

226. The term of office of a Senator is four years; of a member of the Assembly, two years.

Term of office—of members of Legislature, Const. Cal., art. 4, §§ 3-5.

227. Sections 227 to 230, inclusive, are superseded by Sections 30-32 of Act of March 16, 1874, given under § 78, *ante*.

ARTICLE II.

MEETING AND ORGANIZATION OF THE LEGISLATURE.

§ 235. Time and place of meeting.
§ 236. Certificate of election, evidence of right to seat.
§ 237. Officers who hold until successors are elected.
§ 238. Senate, organization of.
§ 239. Assembly, organization of.
§ 240. Oath to be entered on journals.

235. The Legislature shall assemble at the seat of government at twelve o'clock M. on the first Monday after the first day of January, eighteen hundred and eighty-one, and on the first Monday after the first day of January every two years thereafter. [Approved April 9, 1880.]

Sessions of the Legislature—Const. Cal., art. 4, § 2.

236. The certificate of election is *prima facie* evidence of the right to membership. [Approved March 30; in effect July 6, 1874.]

Qualifications of members—each House the judge of, Const. Cal., art. 4., § 7; generally, see Desty's Const. Cal. 238.

Contesting elections—for members of the Legislature, §§ 273-283.

237. The Secretary of the Senate and Clerk of the Assembly, the Minute Clerks and Sergeants-at-Arms of each House for any session, must, at the next succeeding session of the body, perform the duties of their offices until their successors are elected and qualified.

238. At the hour of twelve o'clock M. on the day appointed for the meeting of any regular session of the Legislature, the President of the Senate, or in case of his absence or inability, then the senior member present, must take the chair, call the members and members elect to order, and then cause the Secretary to call over the Senatorial Districts, in their order, from which members have been elected at the preceding election, and as the same are called the members elect must present their certificates, take the constitutional oath of office, and assume their seats. The Senate may thereupon, if a quorum is present, proceed to elect its officers.

Constitutional oath of office—Const. Cal., art. 20, § 3; see § 906, and generally, §§ 104-910.

Quorum—Const. Cal., art. 4, § 8.

239. At the time specified in section two hundred and thirty-eight the Clerk of the Assembly, or in case of his absence or inability, then the senior member elect present, must take the chair, call the members elect to order, and then call

over the roll of counties in alphabetical order; and as the same are called the members elect must present their certificates, take the constitutional oath of office, and assume their seats. The Assembly may thereupon, if a quorum is present, proceed to elect its officers.

Oath, quorum—see notes to § 238.

240. An entry of the oath taken by members of the Legislature must be made on the Journals of the proper House.

Basis of section—Stats. 1863, p. 286, 288.

Journal—kept by each House, Const. Cal., art. 4, § 10: see also Desty's Const. Cal. 211; 30 Cal. 277; 43 Cal. 560.

ARTICLE III.

NUMBER, DESIGNATION, ELECTION, AND APPOINTMENT OF OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

§ 245. Officers of the Senate.
§ 246. Officers of the Assembly.
§ 247. How elected.
§ 248. Assistant Clerks.
§ 249. How paid.

245. The officers and employees of the Senate consist of a President, President *pro tem.*, one Secretary, two Assistant Secretaries, one Sergeant-at-Arms, one Assistant Sergeant-at-Arms, one Minute Clerk, one Journal Clerk, one Enrolling Clerk, one Engrossing Clerk, three Pages, three Porters, and one Postmaster, who, without additional compensation, shall be Paper-folder. [Approved March 31, 1876.]

246. The officers and employees of the Assembly consist of a Speaker, Speaker *pro tem.*, one Chief Clerk, two Assistant Clerks, one Sergeant-at-Arms, one Assistant Sergeant-at-Arms, one Minute Clerk, one Journal Clerk, one Enrolling Clerk, one Engrossing Clerk, four Porters, four Pages, and one Postmaster, who, without additional compensation, shall be Paper-folder. [Approved March 31, 1876.]

247. All officers and employees of the Legislature, except the President of the Senate, Porters and Pages, must be elected by the House to which such officers and employees are attached. The Porters and Pages shall be appointed by the presiding officers of their respective Houses. [Approved March 31, 1876.]

Elected by the House—see Const. Cal., art. 4, § 7.

248 The Engrossing Clerks and Enrolling Clerks of the Senate and Assembly shall have no power to appoint any

assistants at a per diem, but shall have exclusive control of all engrossing and enrolling that may come into their respective offices, and shall be required to report all bills back within forty-eight hours after their reception, unless further time be granted. Should the amount of work in either of the above named offices accumulate so that the Clerk cannot complete the same within the time specified, then the Engrossing or Enrolling Clerk may employ such assistance as may be necessary to complete the work within the time specified in this Act. [Approved March 31, 1876.]

249. All work performed by assistants in the Engrossing and Enrolling Clerks' offices shall be paid for out of the Contingent Fund of the respective Houses in which the work is performed, as follows: For work performed in the Engrossing Clerks' offices, not to exceed the sum of fifteen cents per folio of one hundred words; and for work performed in the Enrolling Clerks' offices, not to exceed the sum of twenty-five cents per folio of one hundred words. All bills for engrossing or enrolling shall be made out by the Clerk and presented, at the end of each week, to the Committee on Expenditures and Accounts, or such other committee as either House may designate, whose duty it shall be to audit and certify to the correctness of the same. Upon this certificate the Controller shall draw his warrant in favor of the Clerk in whose office the work has been done, for the amount performed each week, and the Clerk shall receive and pay the same to his assistants, and shall become personally responsible to his assistants for their pay, and to their respective Houses for all bills received by them. [Approved March 31, 1876.]

ARTICLE IV.

POWERS AND DUTIES OF THE OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

§ 252. What officers of, may administer oaths.
§ 253. Duties of Secretary and Clerk.
§ 254. Duties of Assistant Secretary and Assistant Clerk.
§ 255. Duties of Minute Clerk.
§ 256. Duties of Journal Clerk of Senate.
§ 257. Duties of Journal Clerk of Assembly.
§ 258. Duties of Copying Clerks. (Repealed.)
§ 259. Duties of Sergeants-at-Arms.
§ 260. Duties of Assistant Sergeants-at-Arms.
§ 261. Duties of officers at close of session.

252. The President and President *pro tem.* of the Senate, and the Speaker and Speaker *pro tem.* of the Assembly, may administer the oath of office to any Senator or Assemblyman,

and to the officers of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination.

Oath of office—§§ 904-910.

253. The Secretary of the Senate and the Chief Clerk of the Assembly must attend each day, call the roll, read the Journal and bills, and superintend all copying necessary to be done for their respective Houses.

Basis of section—Stats. 1861, p. 592.

Journal—see § 240*n*.

Bills—see note to § 311 on Passage of bills.

254. The Assistant Secretaries of the Senate and the Assistant Clerks of the Assembly must take charge of all bills, petitions and other papers presented to their respective Houses, file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the Secretary of the Senate and Chief Clerk of the Assembly.

Bills—see Passage of bills, § 311*n*.

255. The Minute Clerk of the Senate and the Minute Clerk of the Assembly must keep a correct record of the proceedings of their respective Houses.

256. The Journal Clerk of the Senate must record each day's proceedings in the Journal, from which they must be read by the Secretary each day of meeting, and then be authenticated by the signature of the President.

Journal— ee § 240*n*.

257. The Journal Clerk of the Assembly must record each day's proceedings in the Journal, from which they must be read by the Clerk each day of meeting, and then be authenticated by the signature of the Speaker.

Journal—see § 240*n*.

258. Section two hundred and fifty-eight of said Code is hereby repealed. [Approved March 31, 1876.]

259. The Sergeant-at-Arms of the Senate and the Sergeant-at-Arms of the Assembly must give a general supervision, under the direction of their presiding officers, to the Senate and Assembly chambers, with the rooms attached; attend during the sittings of their respective bodies, execute their commands and all process issued by their authority; keep an account for pay and mileage of members, and prepare checks for the same.

Pay and mileage of members—§ 266.

260. The Assistant Sergeant-at-Arms of each House must perform the duties of doorkeeper, prohibit all persons, except members, officers and employees, and such other persons as may have the privilege of the floor assigned them by the rules of each House, from entering within the bar of the House, unless upon invitation, and keep order in the halls and lobbies.

Doorkeeper—open doors, Const. Cal., art. 4, § 13.

261. The Secretary and Assistant Secretaries of the Senate, and Chief Clerk and Assistant Clerks of the Assembly, at the close of each session of the Legislature, must mark, label and arrange all bills and papers belonging to the archives of their respective Houses, and deliver them, together with all the books of both Houses, to the Secretary of State, who must certify to the reception of the same.

Basis of section—Stats. 1861, p. 592.

ARTICLE V.

COMPENSATION OF MEMBERS, OFFICERS, AND EMPLOYEES OF THE LEGISLATURE.

§ 266. Per diem and mileage of members.
§ 267. Per diem and mileage of Speaker of Assembly.
§ 268. Compensation of other officers and employees.
§ 269. Compensation for services after close of session.

266. Members of the Legislature shall receive eight dollars per day, payable weekly, during the session of the Legislature, and ten cents per mile for each mile of travel to and from their residences and the place of holding the session. [Approved April 9, 1880.]

Section conforms—to Const. Cal. 1879, art. 4, § 23.

267. The Speaker of the Assembly shall receive the sum of ten dollars per diem during the session of the Legislature, and the same mileage and sum for contingent expenses as members of the Legislature. [Approved April 23; in effect July 1, 1880.]

268. There must be paid to the Secretary, Assistant Secretaries, Minute, Journal, Enrolling and Engrossing Clerks, and Sergeant-at-Arms of the Senate, the Chief Clerk, Assistant Clerks, Minute, Journal, Enrolling and Engrossing Clerks, and Sergeant-at-Arms of the Assembly, each eight dollars per day; to the Assistant Sergeant-at-Arms of the Senate and Assembly, each six dollars per day; to the Porters of the Senate and Assembly, each four dollars per day; to each Committee Clerk *appointed by authority of either* House, five dollars

per day, except the Clerks of the Judiciary Committees, wh must be paid eight dollars per day; to the Pages and Post masters of the Senate and Assembly, each three dollars pe day. [Approved March 31, 1876.]

269. For services performed under the provisions of Section 261 of this Code, each of the officers therein named receive a compensation of fifty dollars.

ARTICLE VI.

CONTESTING ELECTIONS FOR MEMBERS OF THE LEGISLATURE.

§ 273. Who may contest.
§ 274. Statement of cause of contest to be filed.
§ 275. Commission to take testimony.
§ 276. Notice to person interested. By whom served.
§ 277. Compelling attendance of witnesses.
§ 278. Testimony, how taken.
§ 279. Vacancy in commission, how filled.
§ 280. Fees of officers.
§ 281. Testimony to be transmitted to Secretary of State.
§ 282. Depositions.
§ 283. Further evidence may be taken.

273. The right of any person declared elected to a seat in the Senate or Assembly may be contested by any qualified voter of the county or district to be represented by such Senator or Assemblyman.

Basis of section—Stats. 1850, p. 108.

Qualified voter—see §§ 1083, 1084.

274. The person contesting such election must, within twenty days after the certificate of election is issued, file with the Clerk of the county, or one of the counties in which the alleged cause of contest originated, a statement of the grounds of contest, verified by his oath. [Approved March 30; in effect July 6, 1874.]

Grounds of contest—verified statement of, compare Code Civ. Proc., §§ 1115-1117.

275. On the filing of such statement the Clerk must issue a commission, directed to two Justices of the Peace of his county, to meet at a time and place specified in the commission, not less than twenty nor more than thirty days from the date thereof, for the purpose of taking the depositions of such witnesses as the parties to the contest may wish to examine.

Commission to take testimony—compare Code Civ. Proc., §§ 2024-2028.

Depositions—see Code Civ. Proc., §§ 2019-2038.

276. Written notice of such contest, specifying the time and place of taking depositions, and a copy of the statement, certified by the Clerk, must be delivered to the person whose election is contested, or if he cannot be found, left at the house where he last resided, by the Sheriff of the county in which such person claims his residence, within ten days after such statement is filed.

Notice of contest—compare Code Civ. Proc., § 1119.

277. Either of the Justices of the Peace have power to issue subpœnas for witnesses, at the request of either party, to be served by the Sheriff as other subpœnas; and such Justices, when met at the time and place appointed to take such depositions, have the same power to issue attachments and assess fines against witnesses as is given to Justices of the Peace in the trials of civil actions.

Issuance of subpœnas—from Justices' Courts; see Code Civ. Proc., § 919.

Other subpœnas—see Code Civ. Proc., §§ 1985-1990.

Contempts in Justices' Courts—see Code Civ. Proc., §§ 906-910.

278. The Justices must meet at the time and place appointed, and take the depositions of witnesses produced by the parties, and may continue the examination from day to day, if necessary. When the examination is closed, they must seal up the depositions taken before them, together with the commission, and transmit the same by mail or express to the Clerk with whom the statement was filed.

279. If at any time either of the Justices is unable to proceed in such examination, the Clerk may supply the vacancy by designating any other Justice of the Peace of the county.

280. Officers performing services in a contested election case may charge and collect from the party at whose instance such services were performed, the same fees as are allowed them for similar services in civil cases.

281. The Clerk must seal up the depositions, the original statement, the copy of the notice served upon the party whose right is contested, and the commission issued to the Justices of the Peace, and transmit the same by mail to the Secretary of State, indorsing thereon the names of the contesting parties and the branch of the Legislature before which such contest is to be tried. The Secretary of State must deliver the same, unopened, to the presiding officer of the House in which such contest is to be tried, on or before the second day of the session of the Legislature next after taking such depositions,

and such presiding officer must immediately give notice to the House that such papers are in his possession.

Seal and transmit the depositions—compare Code Civ. Proc., § 2032.

282. At any time after notice of contest has been given, and before the trial thereof before the proper branch of the Legislature, either party may take depositions, to be read on the trial, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on the trial of civil actions; and such depositions, when taken, must be sealed up by the officer taking the same, and directed to the Secretary of State, who must keep the same, unopened, and deliver them to the presiding officer of the House in which the contest is to be tried.

Depositions in civil actions—manner of taking, Code Civ. Proc., §§ 2031-2038.

283. The House before which the contest is pending may take such other evidence in the case as it deems material.

ARTICLE VII.

CONTESTING THE ELECTION FOR GOVERNOR OR LIEUTENANT GOVERNOR.

§ 288. Who may contest.
§ 289. Grounds of contest to be stated in petition.
§ 290. Notice to respondent.
§ 291. Notice to the Houses.
§ 292. Trial Committee, how chosen.
§ 293. Notice of choice.
§ 294. Powers of committee.
§ 295. Judgment of committee.

288. Any elector of the State may contest the election of any person declared elected Governor or Lieutenant-Governor of the State of California.

Basis of section—Stats. 1850, p. 109.

Elector of the State—qualifications of; see §§ 1083, 1084.

289. Such elector may, within twenty days after the declaration of the result of the election, deliver to the presiding officer of each House of the Legislature a verified specification of the grounds of contest.

Grounds of contest—verified specification of; see § 274*a*.

290. As soon as the presiding officers have received the specifications they must make out a notice, in writing, directed to the person whose election is contested, and deliver the same

to a Sergeant-at-Arms, who must serve such notice at once on the person therein named.

Notice of contest—compare § 276, and see note to same.

291. The presiding officers must also immediately give notice to their respective Houses that such specifications have been received.

292. Each House must at once choose seven members of its own body, in the following manner:

1. The names of the members, except the Speaker of the Assembly, written on similar paper tickets, must be placed in a box;

2. The Secretary of the Senate, in the presence of the Senate, and the Clerk of the Assembly, in the presence of the House, must draw from their respective boxes the names of seven members of each.

293. As soon as the names are drawn, notice of the names of members drawn in one House must be given to the other, and the names of the fourteen members drawn must be entered on the Journals of each House.

294. The members thus selected constitute a committee to try such contested election, and for that purpose must hold their meetings publicly at the seat of government at such time and place as they may designate, and may adjourn from day to day, or to a day certain, until such trial is determined. They have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to each party to the contest. They must report their judgment in the premises to both Houses of the Legislature, which report must be entered upon the Journals.

Powers of committee—to procure testimony, §§ 300-304

295. The judgment of the committee thus reported is final and conclusive.

ARTICLE VIII.

ATTENDANCE AND EXAMINATION OF WITNESSES BEFORE THE LEGISLATURE AND COMMITTEES THEREOF.

§ 300. Subpœnas.
§ 301. Service of subpœnas.
§ 302. Contempt.
§ 303. Compelling attendance.
§ 304. Witnesses not to be held to answer criminally. Refusal to testify.

300. A subpœna requiring the attendance of any witness before either House of the Legislature, or a committee thereof may be issued by the President of the Senate, Speaker of the House, or the Chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the Assembly or Senate or a committee;
2. It is addressed to the witness;
3. It requires the attendance of such witness at a time and place certain.
4. It is signed by the President of the Senate, Speaker of the Assembly, or Chairman of a committee.

Power of Legislature—to require attendance of witnesses, 29 Cal. 396.

301. The subpœna may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness is evidence of service. [Approved March 30; in effect July 6, 1874.]

Service of subpœna—in civil actions; see Code Civ. Proc., § 1987.

302. If any witness neglects or refuses to obey such subpœna, or appearing, neglects or refuses to testify, the Senate or Assembly may, by resolution entered on the Journal, commit him for contempt.

Power of Legislature—to punish for contempt, for refusal to testify, 29 Cal. 396.

303. Any witness neglecting or refusing to attend in obedience to subpœna may be arrested by the Sergeant-at-Arms and brought before the Senate or Assembly. The only warrant or authority necessary to authorize such arrest is a copy of a resolution of the Senate or Assembly, signed by the President of the Senate or Speaker of the Assembly, and countersigned by the Secretary or Clerk.

Power of Legislature—to compel attendance of witnesses, 29 Cal. 396.

304. No person sworn and examined before either House of the Legislature, or any committee thereof, can be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify, nor is any statement made or paper produced by any such witness competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him or render him infamous. Nothing

in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

Constitutional provision—of like character, Const. Cal. 1879, art. 4, § 33.

Basis of section—Stats. 1857, p. 97.

Similar provisions—Penal Code, § 14.

Answer tending to disgrace, etc.—different provisions for civil actions; see Code Civ. Proc., § 2065.

ARTICLE IX.

ENACTMENT OF STATUTES.

§ 309. Bills received by the Governor, how indorsed.
§ 310. Approval of bills.
§ 311. Bills returned without approval.
§ 312. Return, when House not in session.
§ 313. Bills remaining with the Governor more than ten days.

309. Every bill must, as soon as delivered to the Governor, be indorsed as follows: "This bill was received by the Governor this ——— day of ———, eighteen ———." The indorsement must be signed by the Private Secretary of the Governor.

Presentation of bills to Governor—after passage, Const. Cal., art. 4, § 16. Meaning of word "presented," 39 Cal. 199.

Enactment of statutes—Requisites of Act, Const. Cal., art. 4, § 24; Desty's Const. Cal. 252-257. Extent of authority for, see note to § 225 on Power of Legislature. Passage of bills, see § 311a. Engrossing and enrolling, see 30 Cal. 257, 258, 277.

310. When the Governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the Secretary of State. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor. [In effect March 2, 1880.]

Governor's approval—of bill; see Const. Cal., art. 4, § 16. Power ceases on adjournment of Legislature, 2 Cal. 165; commented on, 30 Cal. 279; but now see Const. Cal., art. 4, § 16. When statute in effect from moment of, 1 Cal. 406. Passage of bills, § 311a.

Appropriation bill—provision conforms to Const. Cal. 1879, art. 4, § 16. General, what to contain, Const. Cal., art. 4 § 29. For specific purpose, to contain but *one item, Const. Cal.*, art. 4, § 34. Passage despite *objections, see § 311.*

311. When a bill has passed both Houses of the Legislature, and is returned by the Governor without his signature, and with objections thereto, or if it be a bill containing several items of appropriation of money, with objections to one or more items, and upon reconsideration such bill, or item, or items pass both Houses by the constitutional majority, the bill, or item, or items must be authenticated as having become a law by a certificate indorsed on or attached to the bill, or indorsed on or attached to the copy of the statement of objections, in the following form: "This bill having been returned by the Governor with his objections thereto, and, after reconsideration, having passed both Houses by the constitutional majority, has become a law this —— day of ——, A. D. ——;" or, "The following items in the within statement (naming them) having, after reconsideration, passed both Houses by the constitutional majority, have become a law this —— day of ——, A. D. ——," which indorsement, signed by the President of the Senate and the Speaker of the Assembly, is a sufficient authentication thereof. Such bill or statement must then be delivered to the Governor, and by him must be deposited with the laws in the office of the Secretary of State. [In effect March 2, 1880.]

Items of appropriation bill—provisions concerning, inserted by amdt. 1880.

Rest of section—founded on Stats. 1852, p. 112.

Passage of bills—see Desty's Const. Cal. 244. Origination in either House, Const. Cal. art. 4, § 15. Introduction, limited time for, Const. Cal., art. 4, § 2. Printing, Const. Cal., art. 4, § 15. Reading at length, *Id.*, and see 54 Cal. 111. Amendment, see Desty's Const. Cal. 245. Manner of voting, Const. Cal., art. 4, § 15. Majority requisite for passage, *Id.* Mode of, when not investigated, 43 Cal. 560.

Return by Governor—see Legislative Acts, Desty's Const. Cal. 246. Significance of term "return," 39 Cal. 199. With objections, provided for by Const. Cal., art. 4, § 16. Time for, see §§ 312, 313 and notes.

Reconsideration and passage over veto—see Const. Cal., art. 4, § 16. Constitutional majority, Const. Cal., art. 4, § 15.

Authentication—39 Cal. 208.

312. If, on the day the Governor desires to return a bill without his approval, and with his objections thereto, to the House in which it originated, that House has adjourned for the day (but not for the session), he may deliver the bill, with his message, to the presiding officer, Secretary, Clerk, or any member of such House, and such delivery is as effectual as though returned in open session, if the Governor, on the first day the House is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

Section conforms—to decision in 39 Cal. 189.

313. Every bill which has passed both Houses of the Legislature, and has not been returned by the Governor within ten days, thereby becoming a law, is authenticated by the Governor causing the fact to be certified thereon by the Secretary of State, in the following form: "This bill having remained with the Governor ten days (Sundays excepted), and the Legislature being in session, it has become a law this —— day of ——, A. D. ——," which certificate must be signed by the Secretary of State and deposited with the laws in his office.

Section conforms—to Const. Cal., art. 4, § 16.

Within ten days—exclusion of first day in computation, 8 Cal. 412; 39 Cal. 510

Sundays excepted—8 Cal. 412.

ARTICLE X.

PROMULGATION OF STATUTES.

§ 318. Publication and distribution of statutes.

318. The publication and distribution of statutes is provided for in Chapter III., Title I., Part III., of this Code.

Distribution of statutes—§ 409.

Publication of statutes—see §§ 526-538.

ARTICLE XI.

OPERATION OF STATUTES.

§ 323. When statutes take effect.
§ 324. When joint resolutions take effect.
§ 325. Effect of amendment.
§ 326. Construction of statutes.
§ 327. Repeal of statutes.
§ 328. Act not revived by repealing the Act repealing it.
§ 329. Repeal of law creating offense no bar to punishment.
§ 330. Amendatory act, when void.

323. Every statute, unless a different time is prescribed therein, takes effect on the sixtieth day after its passage.

Origin of section—see Stats. 1860, p. 16; 1861, p. 77.

Operation of statutes—uniform, where of a general nature, Const. Cal., art. I, § 11; see further Desty's Const. Cal. 186. Retrospective, see Retroactive Statutes, § 3a., and Ex post facto Laws, Desty's Const. Cal. 201-203.

When statute takes effect—from and after passage, 1 Cal. 406. Immaterial where superseded by later Act, 54 Cal. 296.

324. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

Basis of section—Stats 1850, p. 51.

325. Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

Before section—rule otherwise, 6 Cal. 381: 39 Cal. 313; but see 46 Cal. 19.

Amendments—generally, see under Construction of Statutes, § 4n.

Re-enacting and publishing Act at length—as revised or amended, Const. Cal., art. 4, § 21; Earle v. San Francisco, Aug. 12, 1880, 6 P. C. L. J. 69.

Amendment of repealed section—§ 330.

326. The general rules for the construction of statutes are contained in the preliminary provisions of the different Codes.

Construction of statutes—see note to § 4.

Preliminary provisions—of this Code, §§ 1-20.

327. Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

Pending actions—effect of repeal on, 31 Cal. 122.

Repealing statutes—and Repeals generally, and by implication; see notes to § 18.

328. No Act or part of an Act, repealed by another Act of the Legislature, is revived by the repeal of the repealing Act without express words reviving such repealed Act or part of an Act.

Section—conforms to 41 Cal. 435.

329. The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act. [In effect February 18, 1881.]

No bar to indictment—of offense of levee-cutting, though reduced from felony to misdemeanor; but held, before amdt. 1881, that could not be prosecuted by information, People v. Tisdale, Dec. 6, 1880, 6 P. C. L. J. 727.

Ex post facto laws—see Const. Cal., art. 1, § 16, and Desty's Const. Cal. 201-203.

330. An Act amending a section of an Act repealed is void.

ARTICLE XII.

PUBLIC REPORTS.

§ 332. When State officers, etc., are to report.
§ 333. Reports, printing of.
§ 334. Number to be printed.
§ 335. Distribution of.
§ 336. To be printed in English.
§ 337. Report of Insurance Commissioner, distribution of.

332. All officers, Boards of officers, Commissioners, Trustees, Regents, and Directors, required by law to make reports to the Governor or Legislature, except the Controller of State, must send such reports to the Governor before the first day of October, in the year eighteen hundred and eighty, and in every second year thereafter. The Railroad Commissioners must send their report to the Governor annually on or before the first day of October. [Approved April 23; in effect July 1, 1880.]

Origin of section—see Stats. 1866, p. 784; 1870, p. 333. Railroad Commissioners' clause, added by amdt. 1880.

Controller of State—report of, § 433, subd. 2.

333. The Superintendent of State Printing must print such reports before the last Monday in November next after the receipt thereof. [In effect April 1, 1878.]

Superintendent of State Printing—see §§ 526-538.

Origin of section—see Stats. 1870, p. 359.

334. There must be printed: Of the report of the Secretary of State, twelve hundred copies; of the report of the Controller of State, two thousand copies; of the report of the State Treasurer, six hundred and fifty copies; of the report of the Surveyor-General, two thousand five hundred copies; of the report of the Superintendent of Public Instruction, four thousand five hundred copies; of the report of the Attorney-General, one thousand copies; of the report of the Adjutant-General, six hundred copies; of the report of the State Librarian, six hundred copies; of the report of the Fish Commissioners, fifteen hundred copies; of the report of the Directors, Resident Physician, Visiting Physicians of the Insane Asylum, twenty-five hundred copies; of the report of the Directors of the State Prison, eighteen hundred copies; of the report of the State Board of Harbor Commissioners, twelve hundred copies; of the report of Regents of the University, twelve hundred copies; of the report of the Trustees of the Asylum for the Deaf, Dumb, and [the] Blind, eight hundred copies; of the report of the State Board of Equalization, two thousand copies; of the report of the State Board of Health, one thousand copies; of the report of the Commissioners to manage

the Yosemite Valley and Mariposa Big Tree Grove, five hundred copies; of the report of the Superintendent of State Printing, seven hundred and fifty copies. [In effect April 1, 1878.]

335. The reports must be delivered by the Superintendent of State Printing as follows: To the Governor, fifty copies of each report; to the State Librarian, ten copies of each report; to the Secretary of State, thirty copies of each report; to the Superintendent of Public Instruction, two thousand copies of his report for distribution to School Trustees and teachers, and for exchange with other States; to the Surveyor-General, one thousand copies of his report for distribution to the County Surveyors, Assessors, and County Clerks for the several counties, and for exchange with other States; to the Adjutant-General, two hundred and fifty copies of his report, to be distributed at his discretion; to the Attorney-General, one hundred copies of his report for distribution to the several District Attorneys of the State; to the Controller, two hundred copies of his report; to the Secretary of State, two hundred copies of his report; to the State Treasurer, two hundred copies of his report; to the State Librarian, one hundred and fifty copies of his report; to the officers of each of the Insane Asylums, five hundred copies of their reports; to the Directors of the State Prison, one hundred copies of their report; to the Regents of the University, three hundred copies of their report; to the Trustees of the Asylum for the Deaf, Dumb, and Blind, three hundred copies of their report; to the Fish Commissioners, five hundred copies of their report; to the Superintendent of State Printing, two hundred copies of his report; to the State Board of Health, two hundred copies of their report; to the Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove, two hundred copies of their report. And the remaining copies thereof: One-third to the order of [the] Sergeant-at-Arms of the Senate, and two-thirds to the order of the Sergeant-at-Arms of the Assembly, to be by them distributed pro rata to the members of the Senate and Assembly next to convene. [In effect April 1, 1878.]

336. All reports must be printed in the English language.

337. Of the report of the Insurance Commissioner, the Commissioner must have printed, at the expense of his office, one thousand copies, and must deliver of the same as follows:

To the Governor, twenty copies.

To the State Librarian, ten copies.

To the Secretary of State, thirty copies.

To the Sergeant-at-Arms of the Senate, eighty copies.

To the Sergeant-at-Arms of the Assembly, one hundred and sixty copies.

And the residue must be distributed by the Commissioner in furtherance of the interest of insurance. [Approved March 30; in effect July 6, 1874.]

CHAPTER III.

Executive Officers.

ARTICLE I. CLASSIFICATION, NUMBER, AND DESIGNATION OF EXECUTIVE OFFICERS.
II. MODES OF ELECTION OR APPOINTMENT, AND TERM OF CIVIL EXECUTIVE OFFICERS.
III. GOVERNOR.
IV. LIEUTENANT GOVERNOR.
V. SECRETARY OF STATE.
VI. CONTROLLER.
VII. TREASURER.
VIII. ATTORNEY GENERAL.
IX. SURVEYOR GENERAL.
X. REGISTER OF THE STATE LAND OFFICE.
XI. SUPERINTENDENT OF PUBLIC INSTRUCTION.
XII. STATE PRINTER.
XIII. STATE GEOLOGIST.
XIV. SEALER OF WEIGHTS AND MEASURES.
XV. INSPECTOR OF GAS METERS.
XVI. INSURANCE COMMISSIONER.
XVII. FISH COMMISSIONERS.
XVIII. BOARD OF EXAMINERS.
XIX. OTHER EXECUTIVE OFFICERS.

ARTICLE I.

CLASSIFICATION, NUMBER, AND DESIGNATION OF EXECUTIVE OFFICERS

§ 341. Classification of executive officers.
§ 342. Military officers.
§ 343. Designation and number of civil executive officers.

341. Executive officers are either:

1. Civil; or,
2. Military.

342. Military officers are designated and their duties prescribed in Title IV of Part III of this Code.

State militia—see §§ 1895-2117.

343. The number and designation of the civil executive officers are as follows: A Governor; a Private Secretary for the Governor, who is ex officio Clerk of the Board of Examiners; an Executive Secretary for the Governor; a Lieutenant-Governor; a Secretary of State; a Deputy Secretary of State; a Book-keeper for the Secretary of State; two Recording Clerks for the Secretary of State; a Controller; a Deputy Controller; a Book-keeper for the Controller; three Clerks for the Controller; a Treasurer; a Deputy Treasurer; a Clerk for the Treasurer; an Attorney-General; a Deputy Attorney-General; a Surveyor-General, who shall be ex officio Register of the State Land Office; a Deputy Surveyor-General; one Clerk for the Surveyor-General; two Clerks for the Register; a Superintendent of Public Instruction; a Deputy for the Superintendent of Public Instruction; one Clerk for the Superintendent of Public Instruction; a Superintendent of State Printing; an Inspector of Gas Meters; a Vaccine Agent; a Commissioner of Immigration; an Insurance Commissioner; a Deputy for the Insurance Commissioner; three State Capitol Commissioners; four Port Wardens for the Port of San Francisco; a Port Warden for each port of entry except San Francisco; three State Harbor Commissioners; three Harbor Commissioners for the Port of Eureka; six Pilots for each harbor where there is no Board of Pilot Commissioners; three members of the Board of Pilot Commissioners for the Ports of San Francisco, Mare Island, and Benicia; three members of the Board of Pilot Commissioners for Humboldt Bay and Bar; three Fish Commissioners; a President and twelve Directors of the State Board of Agriculture; four members of the State Board of Equalization; a Clerk of the Board of Equalization; three members of the State Board of Railroad Commissioners; a Secretary of the State Board of Railroad Commissioners; a Bailiff of the State Board of Railroad Commissioners; seven members of the State Board of Health; five members of the San Francisco Board of Health; five members of the Sacramento Board of Health; twenty-two Regents of the University of California; three members of the State Board of Education; seven Trustees of the State Normal School; five Trustees of the State Library; a State Librarian; two Deputies for the State Librarian; a Librarian for the Supreme Court Library; five Directors of the State Prisons; two Wardens of the State Prisons; two Clerks of the State Prisons; five Directors for the Insane Asylum at Stockton; five Directors for the Insane Asylum at Napa; a Medical Superintendent of the Insane Asylum at Stockton; two Assistant Physicians of the Insane

Asylum at Stockton; a Resident Physician of the Insane Asylum at Napa; one First Assistant Physician of the Insane Asylum at Napa; *provided*, when the number of patients shall increase to six hundred, the Trustees may elect one additional Second Assistant Physician, with the same pay and emoluments as the First Assistant Physician; a Treasurer of the Insane Asylum at Stockton; a Treasurer of the Insane Asylum at Napa; five Trustees of the Asylum for the Deaf and Dumb and the Blind; three Trustees of the State Burying Grounds; nine Commissioners of the Yosemite Valley and Mariposa Big Tree Grove; such other officers as fill offices created by or under the authority of general laws for the government of counties, cities, and towns, or of the charters or special laws affecting the same, or of the health, school, election, road, or revenue laws. [Approved April 23; in effect July 1, 1880.]

State Board of Railroad Commissioners—created by Stats. 1880, p. 207 or 45, pursuant to Const. Cal. 1879, art. 12, §§ 22, 23.

ARTICLE II.

THE MODE OF ELECTION OR APPOINTMENT AND TERM OF OFFICE OF CIVIL EXECUTIVE OFFICERS.

§ 343. Certain officers elected.
§ 349. State Printer.
§ 350. Register of Land Office.
§ 351. State Sealer of Weights and Measures.
§ 352. State Board of Equalization.
§ 353 Regents of the University.
§ 354. Trustees of State Normal School.
§ 355. State Board of Education.
§ 356. Officers of Libraries.
§ 357. Yosemite and Big Tree Commissioners.
§ 358. Superintendent, etc., of Insane Asylum.
§ 359. Directors of State Board of Agriculture.
§ 360. San Francisco Board of Health.
§ 361. Sacramento Board of Health.
§ 362. Harbor Commissioners.
§ 363. San Francisco Marine Board. (Repealed.)
§ 364. Board of Examiners.
§ 365. State Board of Tide Land Commissioners. (Repealed.)
§ 366. State Capitol Commissioners.
§ 367. State Prison Directors.
§ 368. Inspector of Gas Meters.
Trustees of the State Burying Grounds.
Directors of Insane Asylum.
Trustees of Asylum for Deaf, Dumb, and Blind.
Port Wardens.
Insurance Commissioner.
State Board of Health.
Vaccine Agent.
Commissioner of Immigration.
Pilot Commissioners.
Pilots.
Fish Commissioners.
State Geologist.
Tide Land Commissioners.

§ 369. Term of office of officers mentioned in preceding section.
§ 370. Private Secretary and Clerk of Governor.
§ 371. Deputies and Clerks.

348. The mode of election of the Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, and Superintendent of Public Instruction, is prescribed by the Constitution.

Constitutional provisions—for elections of officers named: Governor, Const. Cal., art. 5, §§ 2, 4; Lieutenant-Governor, Const. Cal., art. 5, § 15; Superintendent of Public Instruction, Const. Cal., art. 9, § 2; other officers, Const. Cal., art. 5, § 17.

Controller—special election for, void for lack of proper proclamation, 52 Cal. 165.

349. The State Printer is elected at the same time as the State officers mentioned in the preceding section, and holds his office for the term of four years from the first Monday in December next succeeding his election.

State Printer—see Superintendent of Public Printing, designation in §§ 526-538.

350. The Surveyor-General is ex officio Register, and the Deputy Surveyor-General is ex officio Deputy Register, of the State Land Office.

Register of State Land Office—§§ 3395, 3396, 3397.

351. The Secretary of State is ex officio State Sealer of Weights and Measures.

State Sealer of Weights and Measures—and county sealers, §§ 561-567.

352. Members elected, one from each of the Congressional Districts in this State, by the qualified electors thereof, with the Controller, constitute the State Board of Equalization. Their term of office shall be four years, commencing from the first Monday after the first day of January following their election; *provided*, that the terms of those members elected in the year eighteen hundred and seventy-nine shall be three years. They shall choose one of their members Chairman, who shall hold such office during the pleasure of the Board. [In effect April 3, 1880.]

State Board of Equalization—see §§ 3692-3705.

353. The Governor, Lieutenant-Governor, Speaker of the Assembly, Superintendent of Public Instruction, President of the State Board of Agriculture, and President of the Mechanics' Institute of San Francisco, are ex officio Regents of the University of California. The appointment and terms of

office of the other regents are provided for in Chapter I, Title III, of Part III, of this Code.

Reference to section—see § 1427.

Other Regents—see § 1426.

Regents of the University—generally, §§ 1425-1439.

354. The Governor, Superintendent of Public Instruction, and five Trustees appointed by the Governor, and holding their offices for the term of ten years, constitute the Board of Trustees of the State Normal School.

Reference to section—§ 1488.

355. The appointment and terms of office of the members of the State Board of Education are provided for in Chapter III, Title III, of Part III, of this Code.

Members of State Board of Education—see § 1517.

356. The Trustees of the State Library, the State Librarian, the Deputy State Librarian, and Librarian of the Supreme Court, are elected and appointed, and hold their offices as prescribed in Chapter III, Title V, of Part III, of this Code.

State Library—trustees of, see § 2292.

357. The Commissioners of the Yosemite Valley and Mariposa Big Tree Grove are appointed and hold their offices as prescribed in Title VIII, of Part III, of this Code.

Yosemite and Big Tree Commissioners—see § 3584.

358. The Medical Superintendent, Assistant Physicians, and Treasurer of the Insane Asylums, are elected, appointed, and hold their offices as prescribed in Chapter I, Title V, of Part III, of this Code.

Insane Asylum—officers of, §§ 2136-2200.

359. The President and Directors of the State Board of Agriculture are elected and hold their offices as prescribed in the special statute creating the Board.

State Board of Agriculture—see § 2326.

360. The members of the Board of Health of San Francisco are appointed and hold their offices as prescribed in Title VII, Part III, of this Code.

Board of Health of San Francisco—see § 3005.

361. The members of the Board of Health of Sacramento are appointed and hold their offices as prescribed in Title VII, of Part III, of this Code.

Board of Health of Sacramento—see §§ 3042, 3043.

362. Harbor Commissioners are elected and appointed, and hold their offices as prescribed in Title VI, of Part III, of this Code.

Harbor Commissioners—see §§ 2520, 2567. State Harbor Commissioners, no provision for their election before insertion of § 2520; see 47 Cal. 442, at p. 447.

363. Sections three hundred and sixty-three and seven hundred and two of the Political Code are hereby repealed. [In effect January 13, 1876.]

364. The Governor, Secretary of State, and Attorney-General constitute the Board of Examiners.

Board of Examiners—see §§ 654–683.

365. Sections three hundred and sixty-five and six hundred and ninety-eight of the Political Code are hereby repealed. [In effect February 4, 1876.]

366. The Governor, Secretary of State, and Treasurer constitute the Board of State Capitol Commissioners.

Board of State Capitol Commissioners—see § 697.

367. The Governor, Lieutenant-Governor, and Secretary of State constitute the Board of State Prison Directors; and the Lieutenant-Governor is Warden of the State Prison.

Act of superseding character—in Stats. 1880, p. 243 or 67, conforming to Const. Cal. 1879, art. 10.

368. The following executive officers are appointed by the Governor, with the consent of the Senate:

1. The Inspector of Gas Meters; the Trustees of the State Burying Grounds.

2. The Directors of the Insane Asylum; the Trustees of the Asylum for the Deaf, Dumb, and Blind; the Port Wardens; the Insurance Commissioner; the members of the State Board of Health; a Vaccine Agent.

3. The Commissioner of Immigration; the Pilot Commissioners; the Pilots for each harbor where there is not a Board of Pilot Commissioners; the Fish Commissioners; the State Geologist; the Tide Land Commissioners.

Consent of the Senate—required for Inspector of Gas Meters, 49 Cal. 411.

369. The officers enumerated in the first subdivision of the last section hold their offices for the term of two years; those in the second subdivision, for the term of four years; and those in the third subdivision, during the Governor's pleasure.

370. The Private Secretary and Executive Clerk of the Governor are appointed by him, and hold their offices at his pleasure.

371. All deputies and clerks named in this Article, whose appointments and terms of office are not otherwise provided for, are appointed by and hold office at the pleasure of their principals.

ARTICLE III.

OF THE GOVERNOR.

§ 380. Powers and duties of Governor.
§ 381. To transmit list of appointments to Legislature.
§ 382. Records in office of.
§ 383. Persons acting as Governor.
§ 384. Salary of Governor.
§ 385. Salary of Private Secretary.
§ 386. Salary of Executive Secretary.

380. In addition to those prescribed by the Constitution, the Governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.

2. He is to see that all offices are filled and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the Legislature therewith at its next session.

3. He is to make the appointments and supply the vacancies mentioned in this Code.

4. He is the sole official organ of communication between the Government of this State and the Government of any other State or of the United States.

5. Whenever any suit or legal proceeding is pending against this State, or which may effect the title of this State to any property, or which may result in any claim against the State, he may direct the Attorney-General to appear on behalf of the State, and may employ such additional counsel as he may judge expedient.

6. He may require the Attorney-General or District Attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this State.

7. He may require the Attorney-General to aid any District Attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the General Fund, for the apprehension of any convict who has escaped from the State Prison, or

of any person who has committed or is charged with the commission of an offense punishable with death.

9. He must perform such duties respecting fugitives from justice as are prescribed by Chapter IV, of Title XII, of THE PENAL CODE.

10. He must issue and transmit election proclamations, as prescribed in Title II, of Part III, of this Code.

11. He must issue land warrants and patents, as prescribed in Title VIII, of Part III, of this Code.

12. He must, on or before the first day of September, in the year eighteen hundred and seventy-three, and in each second year thereafter, deliver to the State Printer for publication all biennial reports of officers and Boards for the two preceding years.

13. He may require any officer or Board to make special reports to him, upon demand, in writing.

14. He may issue arms and accouterments for the use of colleges.

15. He must discharge the duties of member of the Board of Examiners, of member of the State Board of Education, of State Prison Director, of State Capitol Commissioner, of Orphan Asylum Commissioner, of Trustee of State Normal School, and of the Board of Military Auditors.

16. He has such other powers and must perform such other duties as are devolved upon him by this Code or any other law of this State.

Origin of article—see Stats. 1850, p. 46; 1852, p. 38; 1853, p. 44; 1857, p. 149; 1858, p. 22; 1860, p. 93; 1861, p. 183; 1862, p. 448; 1863, pp. 150, 647; 1868, pp. 336, 508, 522, 606; 1870, pp. 329, 331, 334, 339, 451, 516, 663, 668, 714.

Prescribed by the Constitution—Powers and duties of Governor, see Const. Cal., art. 5, §§ 1, 5, 6-11, 13, 14, 20. Executive powers, see Desty's Const. Cal. 271. Pardoning power, Const. Cal., art. 7, § 1, and Desty's Const. Cal. 298, 299.

Further duties of Governor—see §§ 381, 382, and Stats. 1872, *passim*, so far as unchanged by any later enactments.

SUBDIVISION 3. **Power to fill vacancies**—Const. Cal., art. 5, § 8, and see Desty's Const. Cal. 272, 273. Vacancy, what constitutes, § 996; mode of supplying, §§ 997-1004. Illegal exercise of, 28 Cal. 282; 30 Cal. 160; 37 Cal. 614, 639; 49 Cal. 407.

SUBDIVISION 8. **Provision**—for deficiency in appropriation for payment of rewards, Stats. 1881, p. 49.

SUBDIVISION 9. **Fugitives from justice**—Penal Code, §§ 1547-1559.

SUBDIVISION 10. **Election proclamations**—§§ 1053, 1054.

SUBDIVISION 11. **Public lands**—§§ 3395-3574.

381. Within ten days after the meeting of the Legislature, the Governor must transmit to it a list of all appointments made by him under the provisions of Section 1000.

Appointments to fill vacancies—occurring during recess of Legislature, § 1000.

382. The Governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application;

2. A register of statements in capital cases made to him, with his action thereon;

3. An account of all his official expenses and disbursements, including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime;

4. A register of all appointments made by him, with date of commission, names of appointee and predecessor;

5. A record of all persons confined in the State Prison, showing the name of the convict, his age and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires.

383. Every provision in the laws of this State in relation to the powers and duties of the Governor, and in relation to acts and duties to be performed by others toward him, extends to the persons performing for the time being the duties of Governor.

Governor pro tempore—see Const. Cal., art. 5, §§ 15, 16.

384. The annual salary of the Governor, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be by law hereafter devolved upon him, six thousand dollars. [Approved April 23; in effect July 1, 1880.]

Compensation of Governor—and other State officers, fixed by Const. Cal. 1879, art. 5, § 19; amdt. 1880 conforms to such provision.

385. The annual salary of the Private Secretary of the Governor, and ex officio as Clerk of the Board of Examiners, is three thousand dollars. [Approved April 23, in effect July 1, 1880.]

386. The annual salary of the Executive Secretary of the Governor is two thousand dollars. [Approved April 23, in effect July 1, 1880.]

ARTICLE IV.

LIEUTENANT GOVERNOR.

§ 396. Duties of.
§ 397. Compensation of.

396. The duties of the Lieutenant-Governor are prescribed by the Constitution. [Approved April 23; in effect July 1, 1880.]

Prescribed by the Constitution—duties of Lieutenant-Governor, Const. Cal., art. 5, §§ 15, 16.

Lieutenant-Governor—generally; see same sections of Constitution. Liability to impeachment, Const. Cal., art. 4, § 18. As Governor's successor, § 383.

397. The Lieutenant-Governor shall receive the same per diem and mileage, and sum for contingent expenses, as the Speaker of the Assembly, and only during the session of the Legislature. [Approved April 23; in effect July 1, 1880.]

Lieutenant-Governor's compensation—fixed by amdt. 1880, pursuant to Const. Cal. 1879, art. 5, § 19.

ARTICLE V.

OF THE SECRETARY OF STATE.

§ 407. Custody of records.
§ 408. Duties of Secretary of State.
§ 409. Distribution of statutes and journals.
§ 410. Distribution of reports of Supreme Court.
§ 411. To mark books distributed.
§ 412. To superintend and take charge of Capitol.
§ 413. To furnish fuel and stationery.
§ 414. Expenses for fuel, etc., how paid.
§ 415. Translation of laws into Spanish, etc.
§ 416. Fees.
§ 417. Salary of Secretary.
§ 418. Salary of Deputy.
§ 419. Salary of Clerk.
§ 420. Salary of Recording Clerks.
§ 421. Salary of General Clerk.
§ 422. Salary of Special Clerks.
§ 423. Official bond.

407. The Secretary of State is charged with the custody:

1. Of the enrolled copy of the Constitution;
2. Of all Acts and Resolutions passed by the Legislature;
3. Of the Journals of the Legislature;
4. Of the Great Seal;
5. Of all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law.

General basis of article—Stats. 1854, pp. 117, 118, 177; 1861, p. 413; 1863, p. 703,; 1866, p. 103, 156, 270; 1868, pp. 447, 448, 669; 1870, pp. 373, 517.

Secretary of State—has custody of official records: see Const. Cal., art. 5, § 19. Subject to impeachment, Const. Cal., art. 4, § 18. Grants and commissions countersigned by, Const. Cal., art. 5, § 14. Revision of Constitution, assistant in canvassing returns on, Const. Cal., art. 18, § 2. Mode of election and term of office, § 348.

408. In addition to the duties prescribed by the Constitution, it is the duty of the Secretary of State:

First—To attend at every session of the Legislature, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two Houses, or either of them.

Second—To keep a register of, and attest the official acts of, the Governor.

Third—To affix the Great Seal, with his attestation, to commissions, pardons, and other public instruments, to which the official signature of the Governor is required.

Fourth—To record in proper books all conveyances made to the State, and all articles of incorporation filed in his office.

Fifth—To receive and record in proper books the official bonds of all the officers whose bonds are fixed by part three of this Code, and then to deliver the originals to the State Treasurer.

Sixth—To record in a proper book all changes of names certified to him by the County Clerks, in the manner in which such record is now made.

Seventh—To take and file in his office receipts for all books distributed by him, and to direct the County Clerk of each county to do the same.

Eighth—To certify to the Governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the Governor.

Ninth—To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office.

Tenth—To deliver to the State Printer, at the earliest day practicable after the final adjournment of each session of the Legislature, an index of all laws, resolutions (with marginal notes), and Journals, kept, passed, or adopted at such session.

Eleventh—To notify, in writing, the District Attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

Twelfth—To present to the Legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him in furnishing fuel, lights, and stationery.

Thirteenth—To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payor, paid or not paid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

Fourteenth—To file in his office descriptions of seals in use by the different State officers, and furnish such officers with new seals whenever required.

Fifteenth—To discharge the duties of member of the State Board of Examiners, State Capitol Commissioner, State Sealer of Weights and Measures, and all other duties required of him by law.

Sixteenth—To report to the Governor, at the time prescribed in section three hundred and thirty-two of this Code, a detailed account of all his official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended.

Seventeenth—He must distribute of the bound volumes of the decisions of the Supreme Court, as soon as he receives them:

First—To each State, one copy.

Second—To the Library of Congress, the State Library, and the Supreme Court Library, two copies each.

Third—To each department of this State, and to each of the United States District Judges for this State, Justices of the Supreme Court, and Judges of the Superior Courts, one copy.

Fourth—To each District Attorney and County Clerk, one copy.

Fifth—To the Reporter of the Decisions, ten copies. [Approved April 23; in effect July 1, 1880.]

Duties prescribed by Constitution—see Const. Cal., art. 5, § 19.

Other duties—of Secretary of State; see Stats. 1872, *passim* (subject to any subsequent changes).

409. Immediately after the laws, resolutions, and journals mentioned in Subdivision 9 of the preceding section are bound, the Secretary of State must distribute the same as follows:

1. To each department of the Government at Washington and of the Government of this State, one copy;

2. To the Library of Congress, the State Library, and to the Supreme Court Library, two copies each;

3. To each of the States, two copies;

4. To each of our members of Congress, and to each of the United States District Judges, Judges of the Supreme, District, and County Courts of this State, and to the Municipal Criminal and Probate Courts of the City and County of San Francisco, one copy;

5. To the Lieutenant-Governor, each member of the Legislature, Secretary of the Senate, and Clerk of the Assembly, at the session when such laws and journals were adopted, one copy;

6. To each of the incorporated colleges of the State, the University, and to such other literary and scientific institutions as in his opinion may secure an interchange of works, one copy;

7. Of the laws alone, to the County Clerk of each county, in the cheapest and most expeditious manner, to be by the Sheriff distributed under the directions of the Clerk, one copy for the Board of Supervisors, one copy to each county officer and each Justice of the Peace; and of the journals, three copies of each House to each County Clerk, for the use of the county.

410. He must distribute of the bound volumes of the decisions of the Supreme Court, as soon as he receives them:

1. To each State, one copy;
2. To the Library of Congress, the State Library, and the Supreme Court Library, two copies each;
3. To each department of this State, and to each of the United States District Judges for this State, Supreme, District, and County Judges, and the Judges of the Municipal Criminal and the Probate Courts of the City and County of San Francisco, one copy;
4. To each District Attorney and County Clerk, one copy;
5. To the Reporter of the decisions, ten copies.

Same provision—incorporated, with necessary alterations, in § 408, as subd. 17, by amdt. 1880.

Distribution of Codes, etc.—see Stats. 1872, p. 481.

411. The Secretary of State must indelibly mark each book distributed to officers in this State (except legislative officers and the Reporter) with the name of the county to which and the official designation of the officer to whom it is sent. Such books remain the property of the State, and must be by the officers receiving them delivered to their successors.

412. The Secretary of State is the Superintendent and has charge of the State Capitol, and he must keep the same, together with all property therein, in good order and repair.

State Capitol—see under Seat of government, § 145a.

413. Fuel, lights, and stationery for the Senate and Assembly, Supreme Court, and State and Supreme Court Libraries, and for all officers having their offices or chambers in the State Capitol, must be furnished by the Secretary of State.

Fuel, lights and stationery—accounting to Legislature for, § 408, subd. 12.

414. The expenses incurred by him in carrying into effect the provisions of Sections 409, 410, 412, and 413, must be

audited by the Board of Examiners and paid out of any moneys specially appropriated for that purpose.

Board of Examiners—§§ 654-683.

415. The translation of the laws into Spanish, and their distribution, is under the control of the Secretary of State, as follows: During the month of December of each legislative year he must advertise for proposals for the translation into Spanish of such laws as may be authorized by the Legislature. The proposals received must be opened on the first Monday in February thereafter, in the presence of a joint committee of both Houses of the Legislature, who must, within ten days thereafter, award the contract to the lowest competent bidder; but not more than seventy-five cents per folio of one hundred words must be paid for translating, preparing the index, and correcting the proof sheets for the printer, all of which must be done by the translator within three months from the time he is furnished with the copy. The Spanish laws must be distributed in the same manner as laws printed in English, to the Counties of San Diego, San Bernardino, Los Angeles, Santa Barbara, San Luis Obispo, Monterey, Santa Clara, Contra Costa, Alameda, Marin, and Sonoma, and one copy must be sent to each of the District Judges of the First, Third, and Seventh Districts. Before entering on his duties the translator must take an oath for the faithful and correct translation of the laws and joint and concurrent resolutions as herein ordered, and give bond, with two good and sufficient sureties, in the sum of five thousand dollars penalty, to be approved by the Secretary of State, conditioned for the entire, correct, and complete translation and service to be done as herein provided; and his account for such services, when certified by the Secretary of State, must be submitted to the Board of Examiners, and when allowed audited by the Controller and paid by the Treasurer of State.

Laws to be published in English language—only, Const. Cal. 1879, art. 4, § 24.

416. The Secretary of State, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.
2. For affixing certificate and seal of State, two dollars.
3. For filing articles of incorporation, five dollars.
4. For recording articles of incorporation, twenty cents per folio.
5. For issuing each certificate of incorporation, three dollars.

6. For receiving and recording each official bond, five dollars.

7. For each commission, passport or other document signed by the Governor and attested by the Secretary of State (pardons and military commissions excepted), five dollars.

8. For each patent for land issued by the Governor, if for one hundred and sixty acres or less, one dollar; and for each additional one hundred and sixty acres or fraction thereof, one dollar.

9. For searching records and archives of the State, one dollar.

10. For filing each trade-mark, three dollars.

11. For filing and recording notice of appointment of agent, five dollars.

12. For filing and recording notice of removal of place of business, five dollars.

13. For filing certificate of increase or decrease of capital stock, five dollars.

14. For issuing certificate of increase or decrease of capital stock, three dollars.

15. For filing certificate of continuance of existence, five dollars.

16. For issuing certificate of continuance of existence, three dollars.

17. For recording miscellaneous records, papers or other documents, twenty-five cents per folio. But no member of the Legislature or State officer can be charged for any search relative to matters appertaining to the duties of their offices: nor must they be charged any fee for a certified copy of any law or resolution passed by the Legislature relative to their official duties. All fees collected by him must be paid in to the State Treasury at the end of each month, and constitute the State Library Fund. [In effect March 7, 1881.]

Amendment 1881—added words "and military commissions" in parenthesis of subd. 7; also added subds. 10-16 inclusive, and first sentence of subd. 17.

Fee book—§ 408, subd. 13. Certified copies of documents to be furnished on payment of fees, § 408, subd. 9.

417. The annual salary of the Secretary of State, to include all services rendered ex-officio as member of any Board or Commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars. [Approved April 23, in effect July 1, 1880.]

Salary of Secretary of State—under amdt. 1880 corresponds with Const. Cal. 1879, art. 5, § 19. Additional salary previously held payable for extra services, 51 Cal. 542.

418. The annual salary of the Deputy Secretary of State is two thousand four hundred dollars. [Approved April 1, 1878, in effect December 1, 1879.]

419. The annual salary of the Book-keeper shall be two usand dollars. [Approved April 23, in effect July 1, 1880.]

420. The annual salary of each Recording Clerk for the retary of State is sixteen hundred dollars. [Approved il 23, in effect July 1, 1880.]

421. [Repealed April 23, in effect July 1, 1880.]

422. The Secretary of State, during each legislative year, n January until April, inclusive, may employ two special ks, at a monthly salary not exceeding one hundred and nty-five dollars each. [Approved April 23, in effect July 880.]

423. The Secretary of State must execute an official bond ie sum of ten thousand dollars.

nds of officers—§§ 947-986.
nd of Secretary of State—when filed, § 949.

424. All State officers and appointees shall produce item- accounts for all moneys, other than salaries, expended by , accompanied by affidavit that the money has been ex- ed. [Approved April 1, 1878, in effect December 1, 1879.]

ARTICLE VI.

CONTROLLER.

§ 433. General duties of.
§ 434. Certificate of settlement.
§ 435. Special duties connected with School Fund.
§ 436. Order in which warrants must be drawn.
§ 437. Proceedings against defaulters.
§ 438. Salary.
§ 439. Salary of Deputy Controller.
§ 440. Salary of Book keeper.
§ 441. Salary of Clerks.
§ 442. Official bond.
§ 443. Controller to estimate and certify school tax of year.

433. It is the duty of the Controller:

To superintend the fiscal concerns of the State;

To report to the Governor, on the second Monday in ber next preceding each regular session of the Legisla- a statement of the funds of the State, its revenues, and ie public expenditures during the two preceding fiscal s, together with a detailed estimate of the expenditures e defrayed from the Treasury for the two ensuing fiscal , specifying therein each *object* of expenditure, and dis- *ishing between such as are provided* for by permanent or

temporary appropriations and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed;

3. To accompany his biennial report with tabular statements, showing: 1. The amount of each appropriation for the two preceding fiscal years, the amounts expended, and the balance, if any; 2. The amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom;

4. When requested, to give information in writing to either House of the Legislature relating to the fiscal affairs of the State or the duties of his office;

5. To suggest plans for the improvement and management of the public revenues;

6. To keep and state all accounts in which the State is interested;

7. To keep an account of all warrants drawn upon the Treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation;

8. To keep an account between the State and the Treasurer, and therein charge the Treasurer with the balance in the Treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him;

9. To keep a register of warrants, showing the Fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered;

10. To audit all claims against the State in cases where there is [are] sufficient provisions of law for the payment thereof;

11. To examine and settle the accounts of all persons indebted to the State, and to certify the amount to the Treasurer, and upon presentation and filing of the Treasurer's receipt therefor to give such person a discharge and charge the Treasurer therewith;

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it;

13. To require all persons who have received any moneys belonging to the State and have not accounted therefor to settle their accounts;

14. In his discretion to inspect the books of any person charged with the receipt, safe keeping, or disbursement of public moneys;

15. In his discretion to require all persons who have received moneys or securities, or have had the disposition or

management of any property of the State of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require;

16. To direct and superintend the collection of all moneys due the State, and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the State; of which suits the Courts of Sacramento County have jurisdiction, without regard to the residence of the defendants;

17. To draw warrants on the Treasurer for the payment of moneys directed by law to be paid out of the Treasury; but no warrant must be drawn unless authorized by law and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the Fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof;

18. To furnish the State Treasurer with a list of warrants drawn upon the Treasury;

19. To have printed and forwarded to the Auditor of each county blank State licenses;

20. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office;

21. To perform the duties of a member of the State Board of Equalization, and of the State Board of Tide Land Commissioners, and such other duties as are prescribed by law.

Controller—impeachable, Const. Cal., art. 4, § 18. Election, § 348; Const. Cal., art. 5, § 17; 15 Cal. 62; 52 Cal. 165. Compensation, § 428. State Board of Equalization, ex-officio member of, Const. Cal., art. 13, § 9. Canvasser of returns of election on revision of Constitution, Const. Cal., art. 18, § 2. Supervision of, by Board of Examiners, §§ 672, 674, 675, 678. Office of, is one of profit (under Const. Cal. 1849, art. 4, § 21), 10 Cal. 38; executive character of, 15 Cal. 62; but see 16 Cal. 40. Auditing power (see subd. 10), transferrable to Board of Examiners, 6 Cal. 361. Commissions, may pay to County Treasurer, 19 Cal. 365.

SUBDIVISION 11. **Certificate**—see § 434.

SUBDIVISION 17. **Warrants**—authority to draw, § 672, 45 Cal. 149. Repealing effect of subdivision, 45 Cal. 149. Stolen after payment, 15 Cal. 336. Not drawn upon unexhausted specific appropriation, void, 7 Cal. 136; see also 4 Cal. 333.

434. The certificate mentioned in Subdivision 11 of Section 433 must show by whom the payment is to be made, the amount thereof, and the Funds into which it is to be paid, and must be numbered in order, beginning with number one at the commencement *of each fiscal* year.

435. The Controller must keep a separate account of the School Fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must, on the first day of February and on the first day of August of each year, report to the Superintendent of Public Instruction a statement of the securities belonging to the School Fund, of the moneys in the Treasury subject to apportionment, and the several sources from which they accrued. He must draw his warrant on the State Treasurer in favor of any County Treasurer whenever such County Treasurer presents, with his indorsement, an order drawn by the Superintendent of Public Instruction in favor of such county, and the warrant so drawn is not subject to the provisions of Article XVIII of this Chapter.

School fund—provisions of art. 18 inapplicable; see §§ 654-683, and especially §§ 680, 681.

Superintendent of Public Instruction—apportionment reported by, § 1532, subd. 4.

436. All warrants for claims which have been audited by the Board of Examiners and filed in his office must be drawn in the order of the numbers placed upon them by that Board.

Board of Examiners—§§ 654-683.

437. Whenever any person has received moneys, or has money or other personal property which belongs to the State by escheat or otherwise, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the State, and fails to render an account thereof to, and make settlement with, the Controller within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the State Treasury any moneys belonging to the State, upon being required so to do by the Controller, within twenty days after such requisition, the Controller must state an account with such person, charging twenty-five per cent. damages, and interest at the rate of ten per cent. per annum from [the] time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the Controller cannot for want of information state an account, he may in any action brought by him aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the State. [Approved March 30; in effect July 6, 1874.]

Escheatment—see Escheated Estates, § 41*n*.

Further duties of Controller—as to warrants, etc.; see Stats. 1872, *passim* (subject to any later enactments); see also following special Acts: Stats. 1872, p 537; 1874, pp. 519, 606, 620, 802, 864.

438. The annual salary of the Controller, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars. [Approved April 23; in effect July 1, 1880.]

Salary of Controller—as fixed by amdt. 1880, conforms to Const. Cal., art. 5, § 19, and see Desty's Const. Cal. 279. Additional for extra services, 51 Cal. 577.

439. The annual salary of the Deputy Controller is two thousand four hundred dollars. [Approved April 1, 1878; in effect December 1, 1879.]

440. The annual salary of the Book-keeper for the Controller is two thousand dollars. [Approved April 23; in effect July 1, 1880.]

441. The annual salary of each Clerk in the Controller's office is sixteen hundred dollars. [Approved April 23; in effect July 1, 1880.]

442. The Controller must execute an official bond in the sum of fifty thousand dollars.

Bonds of officers—§§ 947-986.

443. The State Controller must, between the tenth day of August and the first day of September of each year, estimate the amount necessary to raise the sum of seven dollars for each census child, between the ages of five and seventeen years, in this State, which shall be the amount necessary to be raised by ad valorem tax, for school purposes, during the year, which amount the Controller must immediately certify to the State Board of Equalization. [In effect March 13, 1874.]

State Board of Equalization—action upon Controller's report, § 719.

ARTICLE VII.

TREASURER.

§ 452. General duties.
§ 453. Limitations upon receipt and payment of money.
§ 454. General Fund.
§ 455. Salary of Treasurer.
§ 456. Salary of Clerks.
§ 457. Watchmen, appointment and salary.
§ 458. Watchmen, powers and duties.
§ 459. Official bond of Treasurer.

452. It is the duty of the Treasurer:

1. To receive and keep in the vaults of the State Treasury all moneys belonging to the State, not required to be received and kept by some other person;

2. To file and keep the certificates of the Controller delivered to him when moneys are paid into the Treasury;

3. To deliver to each person paying money into the Treasury a receipt showing the amount, the sources from which the money accrued, and the Funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year;

4. To pay warrants drawn by the Controller out of the Funds upon and in the order in which they are drawn;

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same;

6. To keep an account of all moneys received and disbursed;

7. To keep separate accounts of the different Funds;

8. To report to the Controller, on the last day of each month, the amount disbursed for redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the Funds out of which they were paid, and the balance of cash on hand in the Treasury to the credit of each Fund;

9. At the request of either House of the Legislature, or of any committee thereof, to give information in writing as to the condition of the Treasury, or upon any subject relating to the duties of his office;

10. To report to the Governor at the time prescribed in Section 332 of this Code, the exact balance in the Treasury to the credit of the State, with a summary of the receipts and payments of the Treasury during the two preceding fiscal years;

11. To authenticate with his official seal all writings and papers issued from his office;

12. To discharge the duties of State Capitol Commissioner, and such other duties as may be imposed upon him by law.

Original basis of article—see Stats. 1850, pp. 51, 63; 1855, pp. 46, 59; 1856, p. 230; 1857, p. 16; 1863, pp. 57, 752; 1870, pp. 333, 738.

Treasurer—constitutional provisions as to, impeachment, election, canvassing returns, same as for Controller, § 433n. Other duties, etc., see Stats. 1872, pp. 118, 717, 874, 905, and *passim* for special Acts. Supervision, counting money, etc., by Board of Examiners, §§ 675-678. When not bound to pay Controller's warrants, 7 Cal. 137. Effect of paying warrants twice, 15 Cal. 236. Held not an executive officer, 16 Cal. 13.

453. He must receive no money into the Treasury unless accompanied by the certificate of the Controller provided for

in Sections 433 and 434 of this Code, and must pay none out upon warrants issued for indebtedness accruing prior to January first, eighteen hundred and fifty-seven.

Funded debt of 1857—Act concerning certain duplicate bonds of, Stats. 1872, p. 503.

Refunding money—paid into State Treasury, special legislation for, prohibited, Const. Cal. 1879, art. 4, § 25. subd. 15.

454. The General Fund consists of moneys received into the Treasury and not specially appropriated to any other Fund.

General Fund—what moneys could formerly not be transferred to, 29 Cal. 210. Invalidity of Drainage Act does not justify compelling transfer of moneys thereby appropriated to, Camron v. Weil, March 7, 1881, 7 P. C. L. J. 492.

455. The annual salary of the State Treasurer, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be hereafter by law devolved upon him, is three thousand dollars. [Approved April 23; in effect July 1, 1880.]

Salary of Treasurer—amdt. 1880 conforms to Const. Cal. 1879, art. 5, § 19.

456. The annual salary of the Deputy State Treasurer is twenty-four hundred dollars; the annual salary of the Clerk of the Treasurer shall be sixteen hundred dollars. [Approved April 23; in effect July 1, 1880.]

457. The Treasurer may employ two Watchmen, at an annual salary each of twelve hundred dollars.

458. The Watchmen must be alternately on duty at all hours of the day and night, and have the same power to make arrests as is by THE PENAL CODE conferred upon peace officers.

Arrest—by peace officer, Penal Code, § 836; generally, Penal Code, §§ 834-851.

459. The Treasurer must execute an official bond in the sum of one hundred thousand dollars.

Official bonds—§§ 947-986.

ARTICLE VIII.

ATTORNEY GENERAL.

§ 470. General duties.
§ 471. Salary.
§ 472. *Salary of Deputy.*
§ 473. *Official bond.*
§ 474. *Duty as to escheats; suits,* counsel and compensation.

470. It is the duty of the Attorney-General:

1. To attend the Supreme Court and prosecute or defend all causes to which the State or any officer thereof, in his official capacity, is a party, and all causes to which any county may be a party, unless the interest of the county is adverse to the State, or some officer thereof acting in his official capacity;

2. After judgment in any of the causes referred to in the preceding section, to direct the issuing of such process as may be necessary to carry the same into execution;

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the State or to any county;

4. To keep a docket of all causes in which he is required to appear, which must during business hours be open to the inspection of the public, and must show the county, district, and Court in which the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and, when prosecuted to judgment, a memorandum of the judgment; of any process issued thereon, and whether satisfied or not, if not satisfied, the return of the Sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention;

5. To exercise supervisory powers over District Attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge;

6. To give his opinion in writing, without fee, to the Legislature or either House thereof, and to the Governor, the Secretary of State, Controller, Treasurer, Surveyor-General, the Trustees or Commissioners of State institutions, and any District Attorney, when required, upon any question of law relating to their respective offices;

7. When required by the public service, or directed by the Governor, to repair to any county in the State and assist the District Attorney thereof in the discharge of his duties;

8. To bid upon and purchase, in the name of the State and under the direction of the Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the State, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment,

lien, or incumbrance taking precedence of the judgment in favor of the State, under the direction of the Board of Examiners to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the Board of Examiners, be paid out of any money appropriated for such purpose;

10. When in his opinion it may be necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the State, such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the Board of Examiners, be paid out of any appropriations for the prosecution of delinquents;

11. To discharge the duties of a member of the Board of Examiners, of the Board of Military Auditors, and other duties prescribed by law;

12. To report to the Governor, at the time required by Section 332 of this Code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from District Attorneys.

Original basis of article—see Stats. 1850, p. 55; 1858, p. 159; 1864, p. 360; 1870, p. 333.

Duties of Attorney-General—see 47 Cal. 369. Sundry duties as to printing materials and State Capitol, Stats. 1872, pp. 38, 54, 556, 744. Land titles, to attend contests to quiet, § 3413. Criminal case, to examine record, 45 Cal. 44.

Attorney-General—Information filed by, 25 Cal 242. Impeachment, subject to, Const. Cal., art. 4, § 18. Mode and time of election, and term of office, § 348, Const. Cal., art. 5, § 17.

Subdivision 1. Supreme Court—State to be represented in by Attorney-General, not by private person, 29 Cal. 213; but assent of Attorney-General may be implied, 36 Cal. 595. Presentability of record to be secured by Attorney-General, 45 Cal. 44.

471. The annual salary of the Attorney-General, to include all services rendered ex officio as member of any Board or Commission as now required, or which may be hereafter devolved upon him by law, is three thousand dollars. [Approved April 23; in effect July 1, 1880.]

Section conforms—to Const. Cal. 1879, art. 5, § 19.

Additional salary—for unofficial services, 47 Cal. 364.

472. The annual salary of the Deputy Attorney-General is twenty-four hundred dollars. [Approved April 23; in effect July 1, 1880.]

473. The Attorney-General must execute an official bond in the sum of ten thousand dollars.

Official bonds—§§ 947-986.

474. It shall be the duty of the Attorney-General to institute investigation for the discovery of all real and personal property which may have or should escheat to the State, and for that purpose shall have full power and authority to cite any and all persons before any of the Superior Courts of this State to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property shall be discovered, which should escheat to the State, the Attorney-General must institute suit in the Superior Court of the county where said property shall be situated, for the recovery, to escheat the same to the State. The proceedings in all such actions shall be those provided for in title eight, part three, Code of Civil Procedure. The Attorney-General may, for the purposes and objects of this section, employ counsel to act in his place and stead for the discovery and recovery of both personal and real property; and in such proceedings, both in investigation for discovery or proceedings for recovery, such counsel so employed shall have the power and authority of the Attorney-General. The compensation for services of such counsel shall be determined by the Board of Examiners, and paid out of the sums so found to be escheated and recovered to the State, and not otherwise; *provided*, that the State of California shall in no case be responsible for any charges for attorney fees for suits prosecuted under this Act, but the Attorney-General is hereby authorized to pay to the person or persons discovering the same the costs and charges of prosecuting any suit or suits under this Act, a sum not in any case exceeding ten per cent. of the sums actually received as provided in this Act. [In effect April 3, 1880.]

Section introduced—by amdt. 1876.

Escheats—see Escheated Property, § 41a.

Superior courts—substituted for probate and district courts by amdt. 1880.

ARTICLE IX.

SURVEYOR GENERAL.

§ 483. General duties.
§ 484. Salary.
§ 485. Salary of Deputy Surveyor-General.
§ 486. Salary of Clerk.
§ 487. Official bond.

483. It is the duty of the Surveyor-General:

1. To discharge the duties relating to the public lands imposed upon him by Title VIII, of Part III, of this Code;

2. When required, to survey and mark the boundary lines of counties, cities, villages, and towns;

3. To report to the Governor at the time prescribed in Section 332 of this Code: 1. A statement of the progress made in the execution of the surveys enjoined on him by law; 2. An estimate of the aggregate quantity of land belonging to the State, and the best information he may be able to obtain as to the characteristics of the same; 3. An estimate of the aggregate quantity of all land used for or adapted to tillage and grazing within each county of the State; 4. An estimate of the number of horses, cattle, sheep, and swine within each county of the State; 5. An estimate of the quantity of wheat, rye, corn, potatoes, grapes, and other agricultural and horticultural productions of the two preceding years, together with his views as to the presence, cause, and remedy of any diseases or other malady preventing full and perfect productions; 6. An estimate of the quantity of all mineral lands within each county of the State, and the quantity and value of each mineral produced during the two preceding years, together with a description of the localities in which such minerals may be found; 7. All facts in his opinion calculated to promote the development of the resources of the State;

4. To require County Surveyors and Assessors to collect and transmit to him, at such times as he may direct, information relative to the subject matter of his biennial reports;

5. To authenticate with his official seal all writings and papers issued from his office;

6. To perform such other duties as may be required of him by law.

Foundation of article—see Stats. 1850, pp. 256, 357; 1863, p. 175; 1870, p. 330.

Surveyor-General—Legislature may abolish office, Const. Cal., art. 4, § 19. Impeachable, Const. Cal., art. 4, § 18. Election, etc., see § 348. Mexican grants, duty as to, 40 Cal. 93.

SUBDIVISION 1. Public lands—§§ 3395, 3574.

SUBDIVISION 2. Survey of boundary line—between Siskiyou and Lassen counties, see Stats. 1872, p. 886.

484. The annual salary of the Surveyor-General, for all services rendered in any capacity whatsoever, is three thousand dollars. [Approved April 23; in effect July 1, 1880.]

Section conforms—to Const. Cal. 1879, art. 5, § 19.

485. The annual salary of the Deputy Surveyor-General, including his services as ex officio Deputy Register of the State Land Office, is two thousand four hundred dollars. [Approved April 1, 1878; in *effect* December 1, 1879.]

486. The annual salary of each Clerk in the office of the Surveyor-General is sixteen hundred dollars. [Approved April 23; in effect July 1, 1880.]

487. The Surveyor-General must execute an official bond in the sum of ten thousand dollars.

Official bonds—§§ 947-986.

ARTICLE X.

REGISTER OF THE STATE LAND OFFICE.

§ 497. Register and Deputy.
§ 498. Duties of Register.
§ 499. Salary. (Repealed.)
§ 500. Salary of Clerks.
§ 501. Fees of Register.
§ 502. Official bond.

497. The Surveyor-General is ex officio Register, and the Deputy Surveyor-General is ex officio Deputy Register, of the State Land Office.

Ex-officio Register—Surveyor-General is, 55 Cal. 304.

Register—see next section.

498. The duties of [the] Register are prescribed in Title VIII, of Part III, of this Code.

Duties of Register—see §§ 3395-3574.

499. Sections four hundred and ninety-nine and six hundred and eighty-four of the Political Code are hereby repealed. [In effect February 25, 1880.]

500. The annual salary of each Clerk in the Register's office is sixteen hundred dollars. [Approved April 23; in effect July 1, 1880.]

501. The Register must charge and collect fees as follows: For each certificate of purchase, duplicate, or patent, three dollars; for certifying a contested case to District Court, three dollars; for copies of papers in his office, ten cents per folio, and fifty cents for the certificate with the seal attached; and such other fees as may be allowed by law. All fees received by the Register must be disposed of as provided in Title VIII, of Part III, of this Code.

Disposition of fees—see § 3574.

502. The Register must execute an official bond in the sum of ten thousand dollars.

Official bond—distinct one for Surveyor-General acting as Register, 55 Cal. 304. Generally, see §§ 947-986.

ARTICLE XI.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 512. Duties.
§ 513. Salary.
§ 514. Salary of Deputy.
§ 515. Salary of Clerk.
§ 516. Traveling expenses.
§ 517. Official bond.

512. The duties of the Superintendent of Public Instruction are prescribed in Title III of Part III of this Code.

Duties of Superintendent—§ 1532.

513. The annnal salary of the Superintendent of Public Instruction is three thousand dollars. [Approved April 1, 1878, in effect December 1, 1879.]

Section conforms—to Const. Cal., art. 9, § 2.

514. The annual salary of the Deputy for the Superintendent is eighteen hundred dollars.

515. The annual salary of the Clerk for the Superintendent of Public Instruction is sixteen hundred dollars. [Approved April 23, in effect July 1, 1880.]

516. The actual traveling expenses of the Superintendent, not exceeding ten hundred dollars annually, must be audited by the Board of Examiners, and paid out of the General Fund in the State Treasury. [Approved April 23, in effect July 1, 1880.]

Board of Examiners—§§ 654-663.

517. The Superintendent must execute an official bond in the sum of ten thousand dollars.

Official bonds—§§ 947-986

ARTICLE XII.

SUPERINTENDENT OF STATE PRINTING.

§ 526. General duties.
§ 527. Number of documents to be printed.
§ 528. Laws and Journals to be printed.
§ 529. Manner of printing.
§ 530. Appointment and bond. Incumbent retained. Office continued.
§ 531. Further duties.
§ 532. Paper.
§ 533. Folding, stitching and binding.
§ 534. Salary.
§ 535. Maintenance of machinery.
§ 536. Contingent expenses, fund for.
§ 537. Warrants for wages.
§ 538. Maps, engravings, etc.

526. It is the duty of the Superintendent of State Printing:

1. To print the laws; the Journals of the Legislature; reports of State officers; public documents ordered to be printed by the Legislature; blanks for the Supreme Court, the offices of Governor, Secretary of State, Controller, Treasurer of State, Superintendent of Public Instruction, Attorney-General, Surveyor-General, and Register of the Land Office; the bills, resolutions, and other job printing which may be ordered by either of the two Houses of the Legislature, and all other public printing for the State, unless otherwise expressly ordered by law;

2. To publish, prefixed to each volume of the laws, the names and place of residence of the Governor, and other executive officers of the State, Lieutenant-Governor, Senators, and Represenatives in the Legislature, the presiding officers of the Senate and Assembly, and of Commissioners of the State of California residing out of the State, and in office at the time of such publication;

3. To perform the duties required by the provisions of Article XII, Chapter II, Title I, Part III, of this Code, and such other duties as are imposed upon him by law;

4. He shall keep in his office, open to public inspection, a time-book, containing the name of every employee connected with the State Printing Office, the time employed, the rate of wages, and amount paid; and he shall certify, under oath, to the correctness of all claims for services rendered and materials furnished, which certificate shall be attached to and presented with each claim that shall be presented to the Board of Examiners for allowance, and no such claim shall be certified or allowed unless it be fully itemized;

5. He shall file in the office of the Secretary of State, all proposals, bids, contracts, bonds, and other papers appertaining to the awarding of contracts now in his possession, or which may hereafter come into his possession, retaining in his office copies of the same; and the Secretary of State shall promptly furnish the Board of Examiners, for their use, certified copies of all such papers;

6. All printing required by any of the State Departments, Boards, or any State officer, for the State, the order for the same shall be made out upon a printed blank, with voucher attached, to be furnished by the Superintendent of State Printing, and forwarded to the office of said Superintendent, who shall enter upon a book kept in his office for that purpose, a transcript of said orders; and shall return with the work, when completed, to the person ordering the same, the original order, with duplicate voucher attached; said voucher to be signed by the person receiving the work, and returned

to the Superintendent of State Printing, and both original and duplicate orders shall be kept on file in his office, and shall be a sufficient voucher for said work. The Superintendent of State Printing shall enter upon a book to be kept for said purpose, the name, quantity and weight of paper used for each order printed. He shall also certify, under oath, that all materials, stock, and paper furnished the office under contracts are of the quality, kind, and weight required by such contracts; and no claim arising under any contract shall be allowed or paid unless accompanied by such certificate. He shall also retain and file in his office one copy or sample of each blank, circular, pamphlet, book, legislative bill, file, or report, or any other work emanating from the State Printing Office, excepting blank books, of which he shall file only sample sheets. Said copies or samples shall bear a uniform number and date with the voucher;

7. No printing for the Senate, or any committee of the same, shall be executed except upon an official order of the Secretary, and no order for any printing shall be made by that officer unless the same is ordered by a majority vote of the Senate. All printing done for the Senate shall be delivered to the Sergeant-at-Arms of that body, whose duty it shall be to distribute one-third of the copies of any document printed to the members of the Senate, and two-thirds to the Sergeant-at-Arms of the Assembly, who shall receipt therefor, for distribution to the members thereof. There shall be printed two hundred and forty copies of all bills, resolutions and reports ordered printed by the Senate;

8. No printing for the Assembly, or any committee of the same, shall be executed except upon an official order of the Chief Clerk, and no order for any printing shall be made by that officer unless the same is ordered by a majority vote of the Assembly. All printing done for the Assembly shall be delivered to the Sergeant-at-Arms of that body, whose duty it shall be to distribute two-thirds of the copies of any document printed to the members of the Assembly, and one-third to the Sergeant-at-Arms of the Senate, who shall receipt therefor, for distribution to the members thereof. There shall be printed two hundred and forty copies of all bills, resolutions, and reports ordered printed by the Assembly;

9. The receipts of the respective Sergeant-at-Arms of the Senate and Assembly shall be a sufficient voucher to the Superintendent of State Printing for all work done for either House. [In effect April 1, 1878.]

Superintendent State Printing — office continued as previously created, see § 530. Duties, see § 531. Appointment, qualifications and bond, § 530. Salary, § 534. Subject to supervision of Printing Expert, § 679.

Last three subdivisions—added by amdt 1878 to section as amd. in 1876.

Contest for office—of State Printer, 1 Cal. 519.

Const. Cal. 1879—duties of Supt. State Printing as to election concerning; see Const. Cal., art. 22, §§ 4, 5.

Publication required—of Constitutional amdts., Const. Cal., art. 18, § 1; of laws, Const. Cal., art. 4, § 21; of Legislative journals, Const. Cal., art 4, § 10.

SUBDIVISION 3. Public reports—printing of, §§ 332-337.

527. Whenever any message or document, in book form, is ordered printed by either House, four hundred and eighty copies thereof, in addition to the number ordered, must be struck off and retained in sheets, and bound with the Journals of the House ordering the same, as an appendix. Of bills ordered printed, when the number is not fixed in the order, there must be printed two hundred and forty copies.

528. There must be printed of the laws of each session of the Legislature, twenty-two hundred and fifty copies, in English, to be deposited with the Secretary of State, who, after retaining a sufficient number of said volumes for distribution, in accordance with the provisions of section four hundred and nine of the Political Code, shall deposit one hundred and fifty copies with the State Librarian; the remaining copies to be sold at a price not to exceed three dollars per bound volume; the moneys thus received to be paid into the State Treasury at the end of each month, as other fees are paid by the said Secretary of State, and for the same purposes. Whenever any bill, joint or concurrent resolution, is passed to enrollment, by either the Senate or Assembly, the Committee on Enrollment of the House in which the bill, joint or concurrent resolution originated, shall transmit the same, without delay, to the Superintendent of State Printing, who shall receipt for all such bills and resolutions, and proceed at once to have the same printed, in the order in which received, in the measure prescribed by law for the Statutes. So soon as printed, one copy, with proper blanks for the signatures of the officers whose duty it is to sign enrolled bills, shall be printed on bond paper, which, together with the engrossed bill, shall be sent to the Committee on Enrollment of the House in which the bill originated. Said committee shall compare such copy with the engrossed bill, and if it is found to be correct shall present it to the proper officers for their signatures. When such officials shall have signed their names thereon, as required by law, it shall be an enrolled bill, and shall be transmitted to the Governor for his approval. If the same is signed by the Governor, and becomes a law, the printed law shall go to the Secretary of State and become the official record.

2. Whenever a law is signed by the Governor, official notice shall be forwarded, in writing, to the Superintendent of

State Printing of the fact. Upon the receipt of said official notice, the Superintendent of State Printing shall cause to be printed, for the use of the Legislature, two hundred and forty copies of said law, joint or concurrent resolution, to be distributed, one-third to the Senate and two-thirds to the Assembly, the Sergeant-at-Arms of the respective Houses to receipt to the Superintendent of State Printing for the same, whose receipt shall be a proper voucher for the work. He shall also cause to be printed the requisite number of sheets to make the number of copies of the Statutes required by law to be printed, the one composition of type to answer the purpose of printing the three editions; and of such laws, resolutions, and memorials as may be designated by the Legislature, two hundred and forty copies in Spanish. Of the Journals and Appendices of the Senate and Assembly there must be printed four hundred and eighty copies, in one volume or more, as may be required by the size thereof. The Superintendent of State Printing shall have the laws, Journals of Senate and Assembly, and the Appendices thereto, properly indexed and bound, the laws in full law sheep binding, and Journals and Appendices in half law sheep binding, marble sides, and deliver the same to the Secretary of State for distribution as soon as practical after the final adjournment of the Legislature, and the receipt of the Secretary of State shall be his voucher therefor. [In effect April 1, 1878.]

529. Printing must be done as follows:

The laws, Journals, messages, and other documents in book form must be printed solid, with long primer type, on good white paper; each page, except of the laws must be thirty-three ems wide and fifty-eight ems long, including title, blank line under it, and foot line; of the laws, the same length, and twenty-nine ems wide, exclusive of marginal notes, which notes must be printed in nonpareil type, seven ems wide. Figure work, and rule and figure work, in messages, reports, and other documents in book form, must be on pages corresponding in size with the Journals, if it can be brought in by using type not smaller than minion; if not, it must be executed in a form to fold and bind with the volume. Bills and other works of a similar character must be printed with long primer type, on white, plain cap paper, commencing the heading one-fourth of the length of the sheet from its top, and be forty-six ems wide and seventy-three ems long, including running head, blank line under it, and foot line, and between each printed line there must be a white line corresponding with the body of the type, and each line must be numbered. Blanks must be printed in such form, and on such paper, and with such sized type as the officers ordering them may direct. *The laws must be printed* without chapter

headings, and without blank lines, with the exception of one head line, one foot line, two lines between the last section of an Act and the title of the next Act. When there is not space enough between the last section of an Act to print the title and enacting clause, and one line of the following Act upon the same page, such title may be printed upon the following page. The Journals must be printed without blank lines, with the exception of one head line, one foot line, and two lines between the Journal of one day and that of the following day. In printing the ayes and noes, the word "ayes" and the word "noes" must be run in with the names.

530. The Superintendent of State Printing shall be appointed and commissioned by the Governor of the State, and shall hold office during the pleasure of the Governor, and until his successor is appointed and qualified. He shall be a competent practical printer, and before entering upon the discharge of the duties of his office, shall give a good and sufficient bond to the People of the State of California, in the sum of ten thousand dollars, with two or more sureties, to be approved by the Governor, for the faithful performance of his duties, which bond shall be filed in the office of the Secretary of State. The present Superintendent of State Printing may hold the position without a reappointment or the giving of a new bond, and his said appointment and bond shall be held and treated as if made and given under this Act, and be subject to all its provisions; and the office of Superintendent of State Printing, heretofore created, is hereby continued under this Act. [In effect April 3, 1876.]

Section moulded—upon repealed Act in Stats. 1872, p. 554.

Continuation of office—heretofore created; see repealed Act in Stats. 1872, p. 554.

531. The duties of the Superintendent of State Printing shall be as follows: He shall have the entire charge and superintendence of State printing. He shall take charge of and be responsible on his bond for all manuscripts and other matter which may be placed in his hands to be printed, engraved, or lithographed, and shall cause the same to be promptly executed. He shall receive from the Senate or Assembly all matter ordered by either House to be printed and bound, or either printed or bound, and shall keep a record of the same, and of the order in which it may be received; and when the work shall have been executed, he shall deliver the finished sheets or volumes to the Sergeant-at-Arms of the Senate or Assembly, or of any department authorized to receive them, whose receipts therefor shall be a sufficient voucher to the said Superintendent of State Printing for their delivery. He shall receive and promptly execute all orders for printing

required to be done for the various State offices. He shall employ such compositors, pressmen, and assistants as the exigency of the work from time to time requires, and may at any time discharge such employees; *provided*, that at no time shall he pay said compositors, pressmen, or assistants, a higher rate of wages than is paid by those employing printers in Sacramento for like work. He shall at no time employ more compositors or assistants than the absolute necessities of the State printing may demand, and he shall not permit any other than State work to be done in the State Printing Office. The Superintendent of State Printing shall, on or before the first day of September of each year, make a report, in writing, to the Governor, embracing a record of the complete transactions of his office for the preceding fiscal year, which report shall show, in detail, all the items of expense attending the State printing, and all the expenses of the office, including repairs and the purchase of materials of all kinds. Said report shall also state the number of reams and various kinds of paper delivered to him, and the amount and quality remaining on hand, which report shall be printed for the use of the Legislature. [In effect April 1, 1878.]

Basis of section—see repealed Act in Stats. 1872, p. 554.

532. In July of each year the Superintendent of State Printing shall submit to the State Board of Examiners samples of the various kinds, sizes, and qualities of paper that will probably be required in his office during the year commencing on the then next first Monday in October, an estimate of the probable quantity of each kind, size, and quality that will be so required. Upon being satisfied that the kind, sizes, quantities, and qualities of paper so suggested will be required, they shall direct the Superintendent of State Printing to advertise for thirty days in one daily newspaper published in the City of San Francisco, and one daily newspaper published in the City of Sacramento, for proposals to furnish such paper, or so much thereof as may be required during the year commencing as aforesaid; which bids shall be opened in his office at twelve o'clock M. on the day appointed, in the presence of the said Superintendent, and at least two of the State Board of Examiners; and the State Board of Examiners and the said Superintendent of State Printing shall constitute a Board to award the contract to the lowest responsible bidder. No bill [bid] shall be considered unless accompanied by a certified check in the sum of two thousand dollars, gold coin, payable to the Governor for the use of the people of the State of California, conditioned that if the bidder receives the award of the contract he will, within thirty days, enter into bonds in the sum of ten thousand dollars, *with two* or more sureties, to

be approved by the Governor of the State, that he will faithfully perform the conditions of his contract. All bids must be for the furnishing and delivery of the paper and materials at the State Printing Office, in the City of Sacramento, so that the State shall not be charged with any cost of tranportation or delivery, which must be specified in the advertisement for bids. If all the bids opened shall be deemed too high by said Board, they may decline them and advertise again. If the second set of bids are considered too high, the said Board may again decline them, and the Superintendent of State Printing may purchase such paper in open market. The prices paid shall, in no case, be higher than the lowest price at which such paper was offered to be furnished by the bids so rejected. [In effect April 1, 1878.]

533. All ruling, folding, and folding and stitching, and binding required to be executed for the State, shall be done under the supervision of said Superintendent. He shall advertise for thirty days in one daily newspaper published in the City of San Francisco, and one daily newspaper published in the City of Sacramento, specifying the character of the binding, folding, and stitching to be bid upon, for proposals to do all such folding, folding and stitching, ruling and binding; all of which work shall be done in the City of Sacramento; and on the day appointed he shall, in the presence of the Board of Examiners, open the bids that may be received, and said Superintendent of State Printing and said Board of Examiners shall award said contract to the lowest responsible bidder or bidders therefor. [In effect April 3, 1876.]

534. The Superintendent of State Printing shall receive a salary of twenty-four hundred dollars per annum, payable monthly, out of any money in the General Fund not otherwise appropriated. [In effect April 3, 1876.]

535. Whenever any appropriation is made for the support of the State Printing Office, a sum not exceeding one thousand dollars thereof shall be applied, when necessary, to and used for the purpose of repairing the present and purchasing new machinery of the State Printing Office, in each fiscal year for which the appropriation is made. [In effect April 3, 1876.]

Recent appropriation Acts—Support of office, Stats. 1876, p. 4; insurance, Stats. 1876, p. 327; purchase of printing materials, Stats. 1880, p. 2; enlargement and repair of building, Stats. 1880, p. 386 or 120.

536. Whenever any money is appropriated for the support of the State Printing Office, a sum not exceeding the sum of one thousand dollars thereof shall, in each fiscal year for which the appropriation is made, be applied to and used for

the purpose of paying contingent expenses of State Printing Office. The Superintendent of State Printing shall keep an itemized account of all moneys expended out of the contingent fund hereby created, and shall furnish the Governor with a copy of the same, under oath, at the end of each fiscal year. [In effect April 1, 1878.]

537. The State Treasurer is hereby authorized, when the General Fund is exhausted, to advance the money on the Controller's warrants, drawn for wages and salaries of the employees in the State Printing Office, out of any public funds in the Treasury, which warrants shall be his vouchers until there is money in the General Fund to cancel them; *provided*, that this section shall not apply to any fund against which there are any warrants then due, or to become due, or so as to keep claimants out of their just demands. Any sum of money remaining unexpended of the appropriation heretofore made for the purchase of materials for the State Printing Office is hereby appropriated to the payment of claims due for the construction of the State Printing Office. [In effect April 3, 1876.]

Controller's warrants—specific appropriation for, 4 Cal. 333; refusal to audit accounts, when justified, 46 Cal. 73.

538. When any chart, map, diagram, or other engraving shall be required to illustrate any document ordered to be printed, such chart, map, diagram, or engraving shall be procured by the Superintendent of State Printing. No bills for engraving, or lithographing, or lithograph printing, other than the above, shall be allowed by the Board of Examiners. All State printing shall be done in the State Printing Office. [In effect April 1, 1878.]

ARTICLE XIII.

STATE GEOLOGIST.

§ 548. General duties of.
§ 549. Report to Governor.
§ 550. Specimens to be delivered to University.
§ 551. Salary of Geologist.
§ 552. Compensation of Assistants.
§ 553. Board of Examiners to audit accounts.
§ 554. Reports and maps to be sold, etc.

548. It is the duty of the State Geologist, with the aid of such assistants as he may appoint, to continue, and, with all reasonable diligence, to complete the geological survey of this State. He must also prepare a report of the survey and superintend the publication thereof in the form of a geological,

botanical, zoological, and physiographical history of the State, with full and scientific descriptions of its rocks, fossils, soils, minerals, mines, climates, and physical geography, together with suitable and accurate geological and topographical maps and diagrams of the same.

State Geologist—appointment and term of office, §§ 368, subd. 3, 369.
Geological survey—Act to continue, Stats 1872, p. 355.

549. He must, as near as may be, at the beginning of each session of the Legislature, present to the Governor, who must lay the same before the Legislature, a report of progress, in which the operations of the geological survey during the interval since his last preceding report must be set forth, and its most important results made public.

550. The geological and other specimens collected by the State Geological Survey must, excepting such as may be required by the State Geologist to aid in the preparation of his report, be delivered over to the Regents of the State University, to be by them deposited in the cabinet of the same as the property of the University.

Specimens to be turned over to the University—see Stats. 1874, p. 992.
Like disposition of other materials—of survey, see Stats, 1874, p. 694.

551. The annual salary of the State Geologist is six thousand dollars, payable monthly out of any appropriations which may be made by the Legislature for the continuation of the work of the survey.

552. His assistants receive such compensation as he may determine, payable in the same manner, out of the same Fund.

553. The accounts of the State Geologist, including salaries and all other expenses of the survey, must be audited by the Board of Examiners, and, if found correct, must be paid out of the State Treasury in such manner as may be provided by law.

554. The volumes and maps of the report must be sold upon such terms as the Governor deems to be most advantageous to the State; and any moneys derived from such sales must be applied to the completion of the unfinished publications of the survey, and the surplus, if any, must be paid into the Common School Fund of the State.

Distribution of reports—of State Geological Survey, see Stats. 1872, p. 55; supplementary Act, Stats. 1872, p. 924.
Sale and republication of reports—by Regents of University, Stats. 1874, p. 694.

ARTICLE XIV.

SEALERS OF WEIGHTS AND MEASURES.

§ 561. General duties of.
§ 562. County Clerks ex officio Sealers.
§ 563. Duties of County Sealers.
§ 564. Standards for County Sealers.
§ 565. Standards to be marked.
§ 566. Standards, County Sealers to compare, etc.
§ 567. Fees.

561. The State Sealer of Weights and Measures has the general supervision of the weights and measures of the State. He must take charge of the standards, and see that they are kept in and in no case removed from a fireproof vault in his office, except for the purpose of comparing and copying. He must correct the standards of the cities and counties, provide them with the necessary standards, balances, and other means of adjustment, and as often as once in ten years compare the same with those in his possession.

Basis of section—and succeeding sections of article, Stats. 1861, p. 86.

Weights and measures—§§ 3209-3223. False, Penal Code, §§ 552-555. Secretary of State ex-officio Sealer of, § 351.

562. The County Clerks are ex officio County Sealers of Weights and Measures for their respective counties.

563. The County Sealers must keep in their offices the standards of weights and measures for their respective counties.

564. Copies of the original standards, to be made of such materials as the State Sealer directs, must be deposited by him in the office of the County Sealers of the several counties of this State, at the expense of the counties, which are severally responsible for the preservation of the copies respectively delivered to them.

565. The State Sealer must cause to be impressed on each of the copies of such original standards the letter "C," and such other device as he may direct for the particular county; which device must be recorded in the State Sealer's office, and a copy thereof delivered to the respective County Sealers.

566. The County Sealers must compare all weights and measures, which are brought to them for that purpose, with the copies of the standards in their possession, and when the same are found or made to conform to the legal standards, the officer comparing them must seal and mark them as correct.

567. Each County Sealer may receive for his services the following fees: For sealing and marking every beam, seventy-five cents; for sealing and marking measures of extension, at the rate of forty cents per yard, not to exceed one dollar and a half for any one measure; for sealing and marking every weight, twenty-five cents; for sealing and marking liquid and dry measures, if the same are of the capacity of a gallon or more, forty cents; if less than a gallon, twenty cents.

ARTICLE XV.

INSPECTOR OF GAS METERS.

§ 577. To provide testing apparatus.
§ 578. Seal.
§ 579. May appoint Deputies.
§ 580. Mode of inspecting and sealing.
§ 581. Using uninspected meters, reinspection.
§ 582. Compensation.
§ 583. Residence.
§ 584. Official bond.

577. The Inspector of Gas Meters must provide and keep suitable apparatus for testing the accuracy of gas meters.

Inspector of Gas Meters—when office not vacant, 49 Cal. 411. Appointment and term of office, §§ 368, 369.

Origin of article—see Stats. 1863, p. 647.

578. He must provide a suitable seal with which to seal meters inspected by him and found to be correct, and must file a copy of such seal in the office of the Secretary of State.

579. He may appoint Deputies.

580. He must, whenever requested, inspect and test the accuracy of any gas meters used or intended to be used for measuring the quantity of gas furnished by any gas company in this State, and when he finds the same correct, seal the same with his seal. No meter shall be accounted correct which registers an amount more than three per cent. greater or less than the amount actually passed through it, but the Inspector may seal meters registering more than three per cent. against the gas company, when requested by the company to do so. Reasonable notice shall be given to the applicant, and also the individual or gas company furnishing or proposing to furnish the gas, of the time and place of the inspection of the meter, and opportunity afforded them, their servants or agents, to be present at and witness the inspection. [In effect April 1, 1876.]

581. Any individual or gas company placing or using for measuring gas a meter which has not been inspected by the

State Inspector, and does not bear his seal, shall be guilty of a misdemeanor, nor shall any charge for gas supplied through such a meter be legally collectable; nor shall the refusal of a consumer to pay the same give authority to the company to refuse to supply him with gas. When a meter, properly sealed, is once placed for the use of a consumer, an inspection may be had as often as the consumer may request the same in writing, he to pay the fee therefor whenever the meter is found not to register too fast. When the meter is found to register too fast, the gas company must pay the fee, together with the costs of removing and resetting the meter, and the Inspector shall remove the seal if there be one upon it; *provided*, that when any meter found incorrect shall be corrected, it shall be sealed by the Inspector without additional charge, if presented to him for reinspection within one month. [In effect April 1, 1876.]

582. He may collect a fee of two dollars and fifty cents for each meter tested.

583. He must reside in the city of San Francisco.

584. He must execute an official bond in the sum of five thousand dollars.

Official bond—see §§ 947–986.

ARTICLE XVI.

INSURANCE COMMISSIONER.

§ 594. Eligibility.
§ 595. General duties of.
§ 596. Business of insurance not to be transacted without his certificate.
§ 597. To examine affairs of companies, when.
§ 598. Fines imposed if companies refuse.
§ 599. May issue subpœnas.
§ 600. Proceedings on insolvency of companies.
§ 601. Proceedings on failure to make up capital.
§ 602. What constitutes insolvency.
§ 603. Must keep a record.
§ 604. May employ actuary, when.
§ 605. Fees to be paid to Commissioner.
§ 606. Assessments for deficiency in salary and expenses.
§ 607. Certain certificates to be filed in his office.
§ 608. Same.
§ 609. May determine name of new corporation.
§ 610. Statements to be made by insurance companies.
§ 611. Statement, contents, publication and filing.
§ 612. Showing to be made in.
§ 613. Statement by life, health and accident companies.
§ 614. Stock notes, how *computed*.
§ 615. *To furnish blanks.*

§ 616. Agent upon whom process may be served.
§ 617. Penalty for failure to make statement.
§ 618. Securities deposited by companies.
§ 619. Deposits, receipts for.
§ 620. Deposits returned, when.
§ 621. Examination of securities, deficiencies.
§ 622. Retaliatory c ause.
§ 623. Bonds from foreign corporations.
§ 624. Same.
§ 625. To furnish Assessor with certain information.
§ 626. Securities.
§ 627. Statement to be based on gold coin values.
§ 628. Salary of Commissioner.
§ 629. Salary of Deputy.
§ 630. Contingent expenses.
§ 631. Location of office.
§ 632. Official bond.
§ 633. Conditions precedent to license of agent.
§ 634. Registry of policies, deposits for security of

594. No person is eligible to the office of Insurance Commissioner or Deputy who is an officer, agent, or employee of an insurance company.

General basis of article—Stats. 1868, pp. 324, 336.

Basis of section—see Stats. 1868, p. 336.

595. The insurance Commissioner must receive all bonds and securities of persons engaged in the transaction of insurance business in this State, and file and safely keep the same in his office, or deposit them as provided in this article. He must examine and inspect the financial condition of all persons engaged, or who desire to engage, in the business of insurance; issue a certificate of authority to transact insurance business in this State to any persons in a solvent condition, who have fully complied with the laws of this State, and are in nowise in arrears to the State, or to any county or city of the State, for fees, licenses, taxes, or penalties accrued upon business previously transacted in the State; determine the sufficiency and validity of all bonds and other securities required to be given by persons engaged, or to be engaged, in insurance business, and cause the same to be renewed in case of the insufficiency or invalidity thereof; and perform all other duties imposed upon him by the laws regulating the business of insurance in this State, and enforce the execution of such laws; prepare and furnish, on demand, to all persons engaged in the insurance business, blank forms for such statements or reports as may by law be required of them; make, on or before the first day of August in each year, a report to the Governor of this State, containing a tabular statement and synopsis of the reports which have been filed in his office, showing, generally, the condition of the insurance business and interests in this State, and other matters concerning insurance, and a detailed statement, verified by oath, of the moneys

and fees of office received by him, and for what purpose. And whenever any insurance company, doing business in this State, shall voluntarily surrender to the Insurance Commissioner its certificate of authority previously granted, thereby withdrawing from business in this State, the Commissioner must make due publication of such surrender and withdrawal daily for the period of one week, in each of two daily newspapers, the one published in the city of San Francisco, and the other in the city of Sacramento. It is further enacted, that if any action hereafter commenced in any District Court of this State, by a citizen thereof, against a foreign corporation or company doing insurance business in this State, such corporation or company shall transfer, or cause be transferred, such action to the United States Circuit Court, the right of such corporation or company to transact insurance business in this State shall thereupon and thereby cease and determine; and the Insurance Commissioner shall immediately revoke the certificate of such corporation or company authorizing it to do business in this State, and publish such revocation daily, for the period of two weeks, in each of some two daily newspapers, the one published in the city of San Francisco, and the other in the city of Sacramento. [In effect April 1, 1878.]

Amendments—of 1874 added sentence before last; those of 1878 added last sentence; rest of section based on Stats. 1863, p. 336.

Insurance—see Civil Code, §§ 2527-2766.

Insurance corporations—see Civil Code, §§ 414-450.

Report of Insurance Commissioner—distribution of, § 337.

596. No person or company must transact insurance business in this State without first procuring from the Insurance Commissioner a certificate of authority, as in this chapter provided; and all policies issued or renewed and all insurances taken before obtaining such certificate of authority, are null and void; and any person who as agent or pretended agent of any insurance company, or other person, shall, without the possession of such certificate of authority, solicit, issue or procure to be issued in this State any policy of insurance, shall forfeit to the people of this State the sum of two hundred dollars for each and every policy so issued, or procured to be issued. But any company or corporation belonging to any other State or country, having policies of life insurance outstanding in this State, and that were issued in accordance with the laws of this State, shall have the right to maintain a special agent in this State for the collection of renewal premiums on such policies, and the Commissioner is hereby authorized to issue to the duly appointed special agent of such company or corporation, a certificate authorizing him to collect such renewal premium; such certificate to be issued on the production to the Commissioner of satisfactory evidence

that such company or corporation is authorized to transact life insurance business in the State or country to which it belongs. And any person who, as agent of either the insured or insurer, shall collect such renewal premiums, must, on or before the tenth day of January, annually, file with the Commissioner a statement, under oath, showing the gross amount of such annual premiums collected by him during the year ending on the thirty-first day of December next preceding, and pay into the office of the Commissioner the sum of twenty dollars, gold coin of the United States. Failing to make such statement and payment within the time named, such person shall forfeit to the people of the State of California the sum of one hundred dollars for each and every policy so renewed by the payment to him of such renewal premium. All penalties and forfeitures under this section must be collected by the Insurance Commissioner, and for the purposes of such collections suits may be instituted by him, in the name of the people of the State of California, in any Court of competent jurisdiction. [Approved April 26, 1880.]

Original section—consisting of first two clauses, founded on Stats. 1868, p. 336.

597. The Commissioner, whenever necessary, or whenever he is requested by verified petition, signed by three persons interested, either as stockholders, policy holders, or creditors of any person engaged in insurance business, showing that such person is insolvent under the laws of this State, must make examination of the business and affairs relating to the insurance business of such person; and for such purpose has free access to all the books and papers of such person, and must thoroughly inspect and examine all his affairs, and ascertain his condition and ability to fulfill his engagements, and whether he has complied with all the provisions of law applicable to his insurance transactions. Such person and his officers and agents must open his books and papers for the inspection of the Commissioner, and otherwise facilitate such examination; and the Commissioner may administer oaths and examine under oath any persons relative to the business of such person; and if he finds the books to have been carelessly or improperly kept or posted, he must employ sworn experts to rewrite, post, and balance the same, at the expense of such person. Such examination must be conducted in the county where such person has his principal place of business, and must be private, unless the Commissioner deems it necessary to publish the result of such investigation, in which case he may publish the same in two of the public newspapers of this State, one of which must be published in the City of San Francisco.

Basis of section—and of three succeeding sections, Stats. 1868, p. 336.

598. The Commissioner may collect the sum of five hundred dollars from any person engaged in the business of insurance, for each refusal to give full and truthful information, and response in writing, to any inquiry in writing by the Commissioner relating to the business of insurance as carried on by him; and for that purpose suits may be instituted by the Commissioner, in the name of the people of the State of California, in any Court of competent jurisdiction.

599. The Commissioner may issue subpœnas for witnesses to attend and testify before him on any subject touching insurance business, or in aid of his duties, which must be served, obeyed, and enforced as provided in the Code of Civil Procedure for civil cases; the Commissioner to issue attachments and impose the penalty for disobedience; and, in addition, the defaulting witness may be punished as provided in the Penal Code.

600. Whenever the Commissioner ascertains that any person engaged in the insurance business is insolvent within the meaning of this chapter, he must revoke the certificate granted, and send by mail to such person, addressed to him at his principal place of business, or deliver to him personally, notice of such revocation, and cause notice thereof to be filed in his office, and also to be published daily for four weeks in some newspaper published in the City of San Francisco. He must require such person, after receiving notice of the revocation, or after the first publication thereof, to discontinue the issuing of any new policies, and the renewal of any previously issued; and in such cases must require the person, or the manager or agent of the business, to repair the capital thereof within such period as he may designate in such requisition, by assessment upon the stockholders for such amounts as will make the capital equal to the amount of the paid up capital, exclusive of assets needed to pay all ascertained liabilities for losses reported, for expenses and taxes, and exclusive of the entire premiums received for outstanding risks.

601. In case any person, upon the requisition of the Commissioner, fails to make up the deficiency of the capital in accordance with the requirements of this chapter, or to comply in all respects with the laws of this State, the Commissioner must communicate the fact to the Attorney-General, who must commence an action in the name of the people of this State, in the Superior Court of the county where the person in question is located, or has his principal office, against such person, and apply for an order requiring cause to be shown why the business should not be closed; and the Court must thereupon hear the allegations *and proofs of the* respective parties, as in

other cases. If it appears to the satisfaction of the Court that such person is insolvent, or that the interests of the public so require, the Court must decree a dissolution of such corporation, and a winding up of its affairs, and a distribution of the effects of such person; but otherwise, the Court must enter a decree annulling the act of the Commissioner in the premises, and authorizing such person to resume business. But the Commissioner must not be held liable for damages if he has acted in good faith. In the event of any additional losses occurring upon new risks taken after the expiration of the period limited by the Commissioner in the requisition, and before the deficiency has been filled up, the Directors of any company, corporation, or association, are individually liable to the extent thereof. [In effect April 3, 1880.]

Superior Court—substituted for District Court by amdt. 1880; rest of section based on Stats. 1868, p. 336.

602. Whenever provision for the liabilities of any person engaged in the business of fire, marine, or inland navigation insurance in this State, for losses reported, expenses, taxes, and reinsurance of all outstanding risks, estimated at fifty per cent. of the premiums received and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all other marine risks, would so far impair his capital stock paid in as to reduce the same below two hundred thousand dollars, or below seventy-five per cent. of said capital stock paid in, such person is insolvent; and in the case of a person engaged in such insurance in this State, on the mutual plan, if the available cash assets of such person shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of two hundred thousand dollars, such person is insolvent; and whenever provision for the liabilities of any person engaged in any kind of insurance business in this State, other than life, provided for in section four hundred and twenty of the Civil Code of this State, for losses reported, expenses, taxes, and reinsurance of all outstanding risks, estimated at such rates as are accepted by the insurance authorities of the State of New York, would so far impair his capital stock paid in as to reduce the same below one hundred thousand dollars, or below seventy-five per cent. of said capital stock paid in, such person is insolvent; and in case of a person engaged in such insurance business in this State, on the mutual plan, if his available cash assets shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of one hundred thousand dollars, such person is insolvent. In the case of a company or corporation engaged in the business of life insurance, whenever its liabilities for losses reported, expenses, taxes, and reinsurance of all *its outstanding* risks, at rates based upon the American Expe-

rience Table of Mortality, and interest at the rate of four and one-half per centum per annum, exceeds its assets, such company or corporation is insolvent. [In effect April 1, 1878.]

Origin of section—last sentence added by amdts. 1878; preceding clause as to mutual plan added and verbal changes made by amdts. 1874: original section based on Stats. 1868, p. 336.

603. The Commissioner must keep and preserve, in a permanent form, a full record of his proceedings, including a concise statement of the condition of each person visited or examined by him.

Same basis—for section as most of preceding sections, Stats. 1868, p. 336.

604. The Commissioner may employ an actuary to make the valuation of life policies, at the compensation of not exceeding three cents for each thousand dollars of insurance, to be paid by the person or corporation for which the valuation is made.

Basis of section—see Stats. 1870, p. 860.

605. The Commissioner must require in advance, in United States gold coin, the following fees:

1. For filing the articles of incorporation, or certified copy of articles, or other certificate required to be filed in his office, thirty dollars;
2. For filing the annual statement required to be filed, twenty dollars;
3. For filing any other papers required by this chapter to be filed, five dollars;
4. For furnishing copies of papers filed in his office, twenty cents per folio;
5. For certifying copies, one dollar each;
6. For each certificate issued as provided in Section 619, the sum of five dollars.

Basis of section—and of next one also, see Stats. 1868, p. 336.

606. If the salary of the Commissioner and the expenses of his office exceeds the fees and charges collected by him, such excess must be annually assessed by the Commissioner upon all persons or corporations engaged in the business of insurance in this State, and they are severally liable therefor, pro rata, according to the amount of premiums received or receivable from risks taken in this State, respectively, during the year ending on the thirty-first day of December next preceding the assessment. The Commissioner must collect all fees and assessments, and pay monthly into the State Treasury whatever amounts may be received and collected by him. He

may bring actions in the name of the people of this State to enforce such collection; and any person liable for any assessment, who neglects or refuses to pay the amount of such assessment within ten days after demand thereof, in writing, by the Insurance Commissioner, becomes liable to pay double the amount of such assessment, and any judgment recovered in such case must be for such double amount and costs.

607. The Commissioner must cause every corporation or person, before engaging in the business of insurance, to file in his office as follows:

1. If incorporated under the laws of this State, a copy of the articles of incorporation, or statement of any increase or diminution of the capital stock, certified by the Secretary of State to be a copy of that which is filed in his office;

2. If incorporated under the laws of any other State or country, a copy of the articles of incorporation, if organized or formed under any law requiring articles to be filed, duly certified by the officer having the custody of such articles; or, if not so organized, a copy of the law, charter, or deed of settlement under which the organization is made, duly certified by the proper custodian thereof, or proved by affidavit to be a copy; also, a certificate under the hand and seal of the proper officer of such State or country having supervision of insurance business therein, that such corporation or company is organized under the laws of such State or country, with the amount of capital stock or assets required by this Chapter;

3. If not incorporated, a certificate setting forth the nature and character of the business, the location of the principal office, the names of the persons and of those composing the association, the amount of actual capital employed or to be employed therein, and the names of all officers and persons by whom the business is or may be managed. The certificate must be verified by the affidavit of the chief officer, secretary, agent, or manager of the association; and if there is any written articles of agreement or association, a copy thereof must accompany such certificates.

Section based—as well as next one, on Stats. 1863, p. 324.

608. He must require from every insurance association not formed under the laws of this State, or not incorporated, carrying on the business of insurance by an agent:

1. A certified or verified power of attorney or written authority to such agent;

2. A notice of any change of agents or in the powers of any agent, within ninety days after such change, and a certified copy of any new or further power of attorney or authority before the same is acted under;

3. When by any law, agreement, or other writing, any change is made in respect to any of the particulars set forth in the certificate on file, a certified copy of such law, agreement, or other writing, verified respectively as certificates are required to be verified; also, a notice of such change before the same is acted under.

609. The Commissioner must require the name under which any corporation hereafter proposes to be formed or organized under the laws of this State for the transaction of insurance business, to be submitted to him before the commencement of such business; and he may reject any name or title so submitted when the same is an interference with or too similar to one already appropriated, or likely to mislead the public in any respect; and in such a case a name not liable to such objection must be chosen.

Basis of section—see Stats. 1868, p. 336.

610. The Commissioner must require from every corporation or person doing the business of insurance in this State a statement verified as follows:

1. If it be made by a corporation organized under the laws of this State, by the oaths of the President and Secretary, or of the Vice-President and Secretary thereof.

2. If made by a foreign insurance company or person, by the oath of the principal executive officer thereof.

3. If it be made by an individual or firm, by the oath of such individual or a member of the firm. [Approved March 30; in effect July 6, 1874.]

Basis of section—before amdt. 1874, see Stats. 1868, p. 324.

611. The statements mentioned in the preceding section must exhibit the condition and affairs of every such corporation, person, firm, or association, on the thirty-first day of December then next preceding, and must be filed with the Commissioner; and as adjusted by the Commissioner, upon a proper examination of the same, must be published by such corporation, person, firm, or association, daily, for the period of one week, in some newspaper published in the city where the principal office is located. Such statement, if made by a person or corporation organized under the laws of this State, must be filed with the Commissioner on or before the first day of February of each year. If made by a person or corporation organized under the laws of any other of the States or Territory of the United States, it must be filed on or before the tenth day of March of each year. And if made by a person or corporation organized under the laws of any country foreign to the United States, it must be filed on or before the first day of May of each year. [In effect April 1, 1878.]

may bring actions in the name of the people of this State to enforce such collection; and any person liable for any assessment, who neglects or refuses to pay the amount of such assessment within ten days after demand thereof, in writing, by the Insurance Commissioner, becomes liable to pay double the amount of such assessment, and any judgment recovered in such case must be for such double amount and costs.

607. The Commissioner must cause every corporation or person, before engaging in the business of insurance, to file in his office as follows:

1. If incorporated under the laws of this State, a copy of the articles of incorporation, or statement of any increase or diminution of the capital stock, certified by the Secretary of State to be a copy of that which is filed in his office;

2. If incorporated under the laws of any other State or country, a copy of the articles of incorporation, if organized or formed under any law requiring articles to be filed, duly certified by the officer having the custody of such articles; or, if not so organized, a copy of the law, charter, or deed of settlement under which the organization is made, duly certified by the proper custodian thereof, or proved by affidavit to be a copy; also, a certificate under the hand and seal of the proper officer of such State or country having supervision of insurance business therein, that such corporation or company is organized under the laws of such State or country, with the amount of capital stock or assets required by this Chapter;

3. If not incorporated, a certificate setting forth the nature and character of the business, the location of the principal office, the names of the persons and of those composing the association, the amount of actual capital employed or to be employed therein, and the names of all officers and persons by whom the business is or may be managed. The certificate must be verified by the affidavit of the chief officer, secretary, agent, or manager of the association; and if there is any written articles of agreement or association, a copy thereof must accompany such certificates.

Section based—as well as next one, on Stats. 1868, p. 324.

608. He must require from every insurance association not formed under the laws of this State, or not incorporated, carrying on the business of insurance by an agent:

1. A certified or verified power of attorney or written authority to such agent;

2. A notice of any change of agents or in the powers of any agent, within ninety days after such change, and a certified copy of any new or further power of attorney or authority before the same is acted under;

3. When by any law, agreement, or other writing, any change is made in respect to any of the particulars set forth in the certificate on file, a certified copy of such law, agreement, or other writing, verified respectively as certificates are required to be verified; also, a notice of such change before the same is acted under.

609. The Commissioner must require the name under which any corporation hereafter proposes to be formed or organized under the laws of this State for the transaction of insurance business, to be submitted to him before the commencement of such business; and he may reject any name or title so submitted when the same is an interference with or too similar to one already appropriated, or likely to mislead the public in any respect; and in such a case a name not liable to such objection must be chosen.

Basis of section—see Stats. 1868, p. 336.

610. The Commissioner must require from every corporation or person doing the business of insurance in this State a statement verified as follows:

1. If it be made by a corporation organized under the laws of this State, by the oaths of the President and Secretary, or of the Vice-President and Secretary thereof.

2. If made by a foreign insurance company or person, by the oath of the principal executive officer thereof.

3. If it be made by an individual or firm, by the oath of such individual or a member of the firm. [Approved March 30; in effect July 6, 1874.]

Basis of section—before amdt. 1874, see Stats. 1868, p. 324.

611. The statements mentioned in the preceding section must exhibit the condition and affairs of every such corporation, person, firm, or association, on the thirty-first day of December then next preceding, and must be filed with the Commissioner; and as adjusted by the Commissioner, upon a proper examination of the same, must be published by such corporation, person, firm, or association, daily, for the period of one week, in some newspaper published in the city where the principal office is located. Such statement, if made by a person or corporation organized under the laws of this State, must be filed with the Commissioner on or before the first day of February of each year. If made by a person or corporation organized under the laws of any other of the States or Territory of the United States, it must be filed on or before the tenth day of March of each year. And if made by a person or corporation organized under the laws of any country foreign to the United States, it must be filed on or before the first day of *May of each year.* [*In effect* April 1, 1878.]

612. Such statement, if made by fire, marine, and inland insurance companies, or by companies organized under section four hundred and twenty of the Civil Code, must show:

First—The amount of the capital stock of the company.

Second—The property or assets held by the company, specifying:

1. The value of real estate held by such company.
2. The amount of cash on hand and deposited in banks to the credit of the company, specifying the same.
3. The amount of cash in the hands of agents, and in course of transmission.
4. The amount of loans secured by bonds and mortgages, constituting the first lien on real estate, on which there is less than one year's interest due or owing.
5. The amount of loans on which interest has not been paid within one year previous to such statement.
6. The amount due the company on which judgments have been obtained.
7. The amount of stocks of this State, of the United States, or any incorporated city of this State; and of any other stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stocks.
8. The amount of stocks held as collateral security for loans, with the amount loaned on each kind of stock, its par value and market value.
9. The amount of interest due and unpaid.
10. The amount of all other loans made by the company, specifying the same.
11. The amount of premium notes on hand on which policies are issued.
12. All other property belonging to the company, specifying the same.

Third—The liabilities of such company, specifying:

1. The amount of losses due and unpaid.
2. The amount of claims for losses resisted by the company.
3. The amount of losses in process of adjustment, or in suspense, including all reported or supposed losses.
4. The amount of dividends declared, due and remaining unpaid.
5. The amount of dividends declared, but not due.
6. The amount of money borrowed and security given for the payment thereof.
7. Gross premiums (without any deduction) and receivable upon all unexpired fire risks running one year or less from date of policy, reinsurance thereon at fifty per cent.
8. Gross premiums (without any deduction) received and receivable upon all unexpired fire risks running more than *one year* from date of policy, reinsurance thereon pro rata.

9. Gross premiums (without any deductions) received and receivable upon all unexpired marine and inland navigation risks, except time risks, reinsurance thereon at one hundred per cent.

10. Gross premiums (without any deductions) received and receivable on marine time risks, reinsurance thereon at fifty per cent.

11. Amount reclaimable by the insured on perpetual fire insurance policies, being ninety-five cent. of the premiums or deposit received.

12. Reinsurance fund and all other liabilities, except capital, under the life insurance or any other special department.

13. Unused balances of bills and notes taken in advance for premiums on open marine and inland policies, or otherwise, returnable on settlement.

14. Principal unpaid on scrip or certificates of profits, which have been authorized or ordered to be redeemed.

15. Amount of all other liabilities of the company, specifying the same.

Fourth—the income of the company during the preceding year, specifying:

1. The amount of cash premiums received.
2. The amount of notes received for premiums.
3. The amount of interest money received, specifying the same.
4. The amount of income received from all other sources, specifying the same.

Fifth—The expenditures of the preceding year, specifying:

1. The amount of losses paid.
2. The amount of dividends paid.
3. The amount of expenses paid, including commissions and fees to agents and officers of the company.
4. The amount paid for taxes.
5. The amount of all other payments and expenditures.

Sixth—1. The amount of risks written during the year.

2. The amount of risks expired during the year.
3. The amount of risks written during the year in the State of California.
4. The amount of premiums thereon. [In effect April 1, 1878.]

613. Such statement, if made by life, health, and accident companies, must show:

First—The amount of the capital stock of the company.

Second—The property or assets held by the company, specifying:

1. The value of the real estate held by the company.
2. The amount of cash on hand and deposited in banks to the credit of the company, specifying the same.

3. The amount of loans secured by bond and mortgage on real estate, specifying the same.
4. Amount of loans secured by pledge of bonds, stocks, or other marketable securities as collateral, specifying the same.
5. Cash market value of all stocks and bonds owned by the company, specifying the same.
6. Interest due the company and unpaid.
7. Interest accrued, but not due.
8. Premium notes and loans in any form taken in payment of premiums on policies now in force.
9. Gross amount of premiums in process of collection and transmission on policies in force.
10. Gross amount of deferred premiums.
11. All other assets, specifying the same.

Third—Liabilities.—1. Claims for death losses and matured endowments, due and unpaid;
2. Claims for death losses and matured endowments in process of adjustment, or adjusted and not due.
3. Claims resisted by the company.
4. Amounts due and unpaid on annuity claims.
5. Trust fund, on deposit, or net present value of all the outstanding policies, computed according to the American Experience Tables of Mortality, with four and one-half per cent. interest.
6. Additional trust fund on deposit, or net present value of extra and special risks, including those on impaired lives.
7. Amount of all unpaid dividends of surplus percentages, bonuses, and other description of profits to policy holders, and interest thereon.
8. Amount of any other liability to policy holders, or annuitants not included above.
9. Amount of dividends unpaid to stockholders.
10. Amount of National, State, and other taxes due.
11. All other liabilities, specifying the same.

Fourth—Income.—1. Cash received for premiums on new policies during the year.
2. Cash received for renewal of premiums during the year.
3. Cash received for purchase of annuities.
4. Cash received for all other premiums.
5. Cash received for interest on loans, specifying the same.
6. Rents received.
7. Cash received from all other sources, specifying the same.
8. Gross amount of notes taken on account of new premiums.
9. Gross amount of notes taken on account of renewal premiums.

Fifth—Expenditures.—1. Cash paid for losses.
2. Cash paid to annuitants.
3. Cash paid for lapsed, surrendered, and purchased policies.
4. Cash paid for dividends to policy holders.
5. Cash paid for dividends to stockholders.
6. Cash paid for reinsurances.
7. Commission paid to agents.
8. Salaries and other compensation of officers and employees, except agents and medical examiners.
9. Medical Examiners' fees and salaries.
10. Cash paid for taxes.
11. Cash paid for rents.
12. Cash paid for commuting commissions.
13. All other cash payments.

Sixth—Balance sheet of premium note account.

Seventh—Balance sheet of all the business of the company.

Eighth—1. Total amount of insurance effected during the year on new policies.
2. Total amount of insurance effected during the year in the State of California.
3. Premiums received during the year on risks written in the State of California.

614. Mutual companies formed, existing, and doing business under an Act entitled "An Act to provide for the incorporation of Mutual Insurance Companies," passed April twenty-sixth, eighteen hundred and fifty-one, may report their approved stock notes as capital paid up, and such notes for all purposes must be deemed part of the paid up capital stock of such corporation.

Basis of section—and of next one, see Stats. 1868, p. 324.

615. The Insurance Commissioner must cause to be prepared, and furnish to each person and to each of the companies incorporated in this State, and to the attorney of each of the companies incorporated or chartered by other States and foreign Governments, printed forms of the statements herein required; and he may make such changes from time to time in the form of the same as seems to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated. The same forms must be addressed to all persons and companies engaged in the same kind of business.

616. The Insurance Commissioner must require, as a condition precedent to the transaction of insurance business in this State by any foreign corporation or company, that such corporation or company must file in his office the name of an

agent, and his place of residence in this State, on whom summons and other process may be served in all actions or other legal proceedings against such corporation or company. All process so served gives jurisdiction over the person of such corporation or company. The agent so appointed and designated shall be deemed in law a general agent, and must be the principal agent or chief manager of the business of such corporation or company in this State. Any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this State, and in consideration of the privilege to transact such insurance business in this State, make and file with the Insurance Commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company, in form and substance as follows: The (giving name of corporation or company) does hereby stipulate and agree, that in consideration of the permission granted by the State of California to it to transact insurance business in this State, that if at any time said corporation or company shall be without an agent in said State, on whom summons or other legal process may be served, service of such summons or other legal process may be made upon the Insurance Commissioner, such service upon the Commissioner to have the same force and effect as if made upon the corporation or company. Whenever such service of summons or other legal process shall be made upon the Insurance Commissioner, he must, within ten days thereafter, transmit by mail, postage paid, a copy of such summons or other legal process to the company or corporation, addressed to the President or Secretary thereof, at its home or principal office. Such copy must be certified by the Commissioner, under his hand and official seal, and the sending of such copy by the said Commissioner shall be a necessary part of the service of summons or other legal process. [In effect April 1, 1878.]

Section founded—before amdts. 1874 and 1878, on Stats. 1870, p. 881.

617. The Commissioner must collect the sum of one thousand dollars from any company or corporation engaged in the business of insurance in this State, for a failure to make and file in his office, within the time prescribed by law, the statements and stipulations required by sections six hundred and ten, six hundred and eleven, six hundred and twelve, six hundred and thirteen, and six hundred and sixteen of this Code, and an additional penalty of two thousand dollars for each and every month thereafter that such company or corporation continues to transact the business of insurance, until such statements and stipulations are filed; and for that purpose suits may be instituted, in the name of the people of the State of California, in any Court of competent jurisdiction. This section shall take effect and be in force from and after the fifteenth

day of May, eighteen hundred and seventy-eight. [In effect April 1, 1878.]

Section amended—in 1874 and 1878; original basis, see Stats. 1868, p. 324.

618. Whenever the laws of any State of the United States, or of any country foreign to the United States, require any insurance company or corporation organized under the laws of this State to deposit with some officer of this State securities in trust for and for the benefit of the policy holders of such company or corporation, as a prerequisite to transacting insurance business in such other State or foreign country, and whenever, under any laws of this State, any insurance company or corporation is required to deposit with any officer of this State securities in trust for and for the benefit of policy holders of such company or corporation, the Insurance Commissioner of this State must receive from such company or corporation securities in the amount required by the law under which such deposit is made, on deposit and in trust for the policy holders of such company or corporation. The value of such securities must be equal to the value of interest-bearing stocks and bonds of the United States Government, but none of such securities must be estimated above the par value of the same, nor above their market value. The Commissioner must, upon the receipt of such securities, forthwith make a special deposit of the same in the State Treasury, in packages marked with the name of the company or corporation from whom recieved, where they must remain as security for policy holders in the company or corporation to which they respectively belong; but so long as the company or corporation continues solvent, he must permit it to collect the interest or dividends on the securities so deposited, and from time to time to withdraw any such securities on depositing other securities in the stead of those to be withdrawn; such new securities to be of the same value mentioned in this section, but such securities must not be withdrawn from the State Treasury unless upon the written order of the acting President and Secretary of the corporation making the deposits, which order must be indorsed by the Commissioner, or upon the order and authority of some Court of competent jurisdiction. [In effect April 1, 1878.]

This and next three sections—amd. in 1878; originally founded on Stats. 1870, p. 321.

619. Whenever any insurance company or corporation has deposited with the Commissioner the requisite security, in conformity with the requirements of the preceding section, the Commissioner must issue to such company or corporation a certificate, under his official seal, of such deposit, for each

State or country requiring the same; which said certificate must state the items and amount of securities so deposited, and that they are of the value therein represented. [In effect April 1, 1878.]

620. Whenever any insurance company or corporation so depositing securities with the Commissioner, has paid, canceled, or re-insured all its unexpired policies outstanding in the State, satisfactorily to the holders thereof, and all its liabilities under such policies are extinguished or assumed by other responsible companies or corporations, then, if on application of such company or corporations, verified by the oaths of its President and Secretary, and from an examination of the books of the corporation, and of its officers, under oath, the Insurance Commissioner is satisfied that all of its policies are so paid, canceled, extinguished, or re-insured, he must deliver up to the corporation the securities deposited. And whenever the laws of any other State or country, by reason of which section six hundred and twenty-two of the Political Code of this State is brought into force, shall be repealed and abrogated, and any deposit which shall have been made with the Commissioner, under and by reason of said section six hundred and twenty-two of the Political Code, must be delivered up to the company or corporation making the deposit. [In effect April 1, 1878.]

621. The Commissioner must make an annual examination of the securities received by him from each insurance company or corporation, and if it appear at any time that the securities deposited by any such company or corporation amount to less than the sum required for the purposes for which the deposit was made, he must notify the company or corporation thereof, and unless the deficiency is made up within thirty days after notice the Commissioner must countermand all the certificates he may have issued to the company or corporation under this chapter, and give notice thereof to the officers of the several States to whom the certificate may have been transmitted; and he must also publish the notice for three weeks successively in some daily newspaper published in the City of San Francisco, at the expense of the company or corporation, to be collected by assessment upon the company or corporation, or its duly appointed agent in this State. [In effect April 1, 1878.]

622. When, by the laws of any other State or country, any taxes, fines, penalties, licenses, fees, deposits of money or of securities, or other obligations or prohibitions, are imposed on insurance companies of this State, doing business in such other State or country, or upon their agents therein, in excess

of such taxes, fines, penalties, licenses, fees, deposits of securities, or other obligations or prohibitions imposed upon insurance companies of such other State or country, so long as such laws continue in force, the same obligations and prohibitions, of whatsoever kind, must be imposed upon insurance companies of such other State or country doing business in this State. And whenever, under this section, any deposit of securities shall be made in this State, such deposit must be made in stocks or bonds of the United States Government, or in those of the State of California; which said securities must be estimated at not exceeding their par value, nor their market value. [In effect April 1, 1878.]

Original section—before amdts. 1874 and 1878, founded on Stats. 1870, p. 321.

623. The Commissioner must require every company, association, or individual, not incorporated under the laws of this State, and proposing to transact insurance business by agent or agents in this State, before commencing such business to file in his office a bond, to be signed by the person or firm, officer or agent, as principal, with two sureties, to be approved by the Commissioner, in the penal sum of two thousand dollars for each insurance company, association, firm, or individual for whose account it is proposed to collect premiums of insurance in this State, the conditions of such bonds to be as follows:

1. That the person or firm, agent, or officer named therein, acting on behalf of the company, association, firm, or individual named therein, will pay to the Treasurer of the county, or city and county, in which the principal office of the agency is located, such sum per quarter, quarterly in advance, for a license to transact an insurance business, or such other license as may be imposed by law, so long as the agency remains in the hands of the person or firm, officer, or agent named as principal in the bond.

2. That the person or firm, officer, or agent, will pay to the State all stamp or other duties on the gross amounts insured by them, in the manner and at the time prescribed by law, inclusive of renewals on existing policies.

3. That the person, firm, agent, or corporation named therein, will conform to all the provisions of the revenue and other laws made to govern them.

Section based—as well as next, on Stats, 1862, p. 243.

624. Whenever the same person, firm, officer, or agent desires to collect premiums of insurance for more than one company, association, or individual, not incorporated under the laws of this State, the Commissioner must require a separate bond, as provided in the preceding section, for each com-

pany or association so represented by such person, firm, officer, or agent.

625. The Commissioner must, before the commencement of each fiscal year as fixed in the revenue laws, furnish the Assessor of the county in which the principal office of any person or corporation doing the business of insurance is situated, all the data concerning premiums collected by, and all other necessary information in relation to the business of such person or corporation as will assist the Assessor in the performance of his duties.

626. The Commissioner must require from every person, before and after engaging in the business of insurance, a full compliance with all the provisions of Title II, Part IV, Division I, of the Civil Code applicable thereto; and every person neglecting to comply with such requirements is subject to the fines and penalties therein prescribed.

Compliance required—with provisions as to insurance corporations, Civil Code, §§ 414-450.

627. All statements, estimates, percentages, payments, and calculations required by this chapter to be made, either by the Commissioner or persons engaged in the business of fire or marine insurance, must be in gold coin of the United States.

628. The annual salary of the Insurance Commissioner is three thousand dollars. [Approved April 23; in effect July 1, 1880.]

No change in section—by amdts 1880.

Civil executive officer—Insurance Commissioner is, § 343.

629. The annual salary of the Clerk of the Insurance Commissioner is sixteen hundred dollars. [Approved April 23; in effect July 1, 1880.]

Deputy—is civil executive officer, § 343.

630. The Commissioner may procure rooms for his office, at a rent not to exceed seventy-five dollars per month, and may provide a suitable safe and furniture therefor; he may also provide stationery, fuel, printing, and other conveniences necessary for the transaction of the business of his office. All expenditures authorized in this section must be audited by the Board of Examiners and paid in the same manner as the salary of the Commissioner.

Basis of section—Stats. 1868, p. 12.

631. The Commissioner must keep his office in the City of San Francisco.

632. The Commissioner must execute an official bond in the sum of ten thousand dollars.

Official bond—§§ 947-986.

633. No person shall in this State act as the agent or solicitor of any life insurance company doing business in this State, until he has produced to the Commissioner, and filed with him, a duplicate power of attorney from the company, or its authorized agent, authorizing him to act as such agent or solicitor. Upon filing such power, the Commissioner shall issue a license to him to act as such agent or solicitor for such company, if such company has received a certificate of authority from such Commissioner to do business in this State; *provided*, that if such agent or solicitor shall, within the twelve months next preceding, have been in the employ of any other company, or its authorized agent, as such agent or solicitor, he must produce to the Commissioner written evidence from such employer that all moneys he may have collected for such company or agent have been paid over to said company or agent. Such license shall continue in force twelve months from the date thereof, but may be, and shall be sooner revoked upon application of the company or its authorized agent. Such license may be renewed from time to time, for an additional period of twelve months, on production by the holder to the Commissioner of a certificate from the company that such person's authority as such agent or solicitor continues. For each such license, or renewal thereof, the Commissioner shall receive the sum of one dollar. The Commissioner shall keep an alphabetical list of the names of persons to whom such licenses shall be issued, with the date of the license and renewal, and the name of the company for whom such person is working. If any person shall, under a false or fictitious name, procure, or attempt to procure, a license to act as agent or solicitor of any life insurance company, he shall be guilty of a misdemeanor. Every person who, in this State, procures, or agrees to procure, any insurance for a resident of this State from any insurance company not incorporated under the laws of this State, unless such company, or its agent, has filed the bond required by the laws of this State relating to insurance, and obtained from the Commissioner a certificate of authority to do business, and every person who solicits or procures any life insurance, without having been duly licensed so to do by the Commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly. The Insurance Commissioner must require, as a condition precedent to the transaction of life insurance business in this State, that every life insurance corporation or company created by the laws of any other State, or of any foreign country, must file in his office the name of an agent,

and his place of residence in this State, on whom summons and other process may be served in all actions, or other legal proceedings against such corporation or company. All process so served gives jurisdiction over the person of such corporation or company; the agent so appointed must be the principal agent of such corporation or company in this State; any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this State, and in consideration of the privilege to transact such insurance business in this State, make and file with the Insurance Commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company, in form and substance as follows: The (giving name of corporation or company) does hereby stipulate and agree that, in consideration of the permission granted by the State of California to it to transact insurance business in this State, that if at any time such corporation or company shall, under the existing provisions of law of this State in relation to insurance companies, be without an agent in this State on whom summons or other legal process may be served, service of such summons or other legal process may be made upon the Insurance Commissioner, such service upon the Commissioner to have the same force and effect as if made upon the corporation or company. Whenever such service of summons or other legal process shall be made upon the Insurance Commissioner, he must, within ten days thereafter, transmit by mail, by registered letter, a copy of such summons or other legal process to the corporation, addressed to the President or Secretary thereof, at its home or principal office; such copy must be certified by the Commissioner, under his hand and official seal, and the sending of such copy by the said Commissioner shall be a necessary part of the service of summons or other legal process. [Approved April 26, 1880.]

Section added—by amdt. 1874, and amd. 1880.

634. It shall be lawful for any company or corporation transacting the business of life insurance in this State, to register with the Insurance Commissioner such of its policies as may be agreed upon by the company and the insured; such registration to consist in a written or printed list of such policies, filed with the Commissioner, showing the name and age of the insured, number and date of the policy, and the kind and amount of insurance in each case. Such list must be filed with the Commissioner within thirty days after the issuance of the first registered policy, and must contain all such policies issued up to the date of filing. After that date, the company must, within three days after the first day of each calendar month, file a statement embracing all its registered policies issued since the filing of its last preceding list.

Upon filing such lists of policies, from time to time, the company must deposit with the Commissioner, as a special deposit for the benefit of such registered policies, securities of the denominations stated in section four hundred and twenty-seven of the Civil Code, as permissible for the investment of the capital and accumulations of life insurance companies. Such deposit must be in an amount equal to the full net value of all policies registered up to the time of making the deposit, and must at all times be equal to such net value of all the registered policies. Upon receipt of such securities, the Commissioner must immediately deposit them in the State Treasury, in accordance with the provisions of section six hundred and eighteen of the Political Code, where they must remain as a special security for the benefit of said registered policies. Such company may at any time withdraw any excess of securities above the net present value hereinbefore specified, upon satisfying said Commissioner, by written proof, that such excess exists, and shall be allowed to receive the interest on all securities deposited, and to exchange such securities, by substituting other securities of the character in which, by the laws of this State, it may invest its funds. [In effect April 1, 1878.]

Section added—by amdt. 1878.

ARTICLE XVII.

FISH COMMISSIONERS.

§ 642. General duties of.
§ 643. No compensation.

642. It is the duty of the Fish Commissioners:

1. To see that the laws for the preservation of fish and game are strictly enforced; and for that purpose they may from time to time employ such assistants as they shall deem necessary, which persons so appointed as assistants shall have all powers and authority of Sheriffs to make arrests for violation of such laws throughout the State.

2. To establish fish breederies for stocking the waters of this State with foreign and native fish.

3. To purchase and import the spawn or ova of fish suitable for food.

4. To stock with such spawn the waters of this State.

5. To employ persons skilled in fish breeding to assist them in their duties.

6. To furnish plans for and direct and compel the construction and repair of fish ladders and ways upon dams and obstructions.

7. To provide for the distribution and protection of game birds imported into this State for purposes of propagation.

8. To report biennially to the Governor a statement of all their transactions and disbursements. [Approved March 28, 1878.]

Amendment of 1878—added subdivisions 1 and 7 to section.

Fishways—in streams frequented by migratory fish, Act to provide for construction, etc., Stats. 1880, p. 387 or 121.

Special Act—to remove obstructions in Pitt River and enable salmon to reach their spawning grounds thereabouts, Stats. 1880, p. 343 or 104.

Report—of Fish Commissioners, §§ 332-33[illegible].

Civil executive officers—the three Fish Commissioners are, § 343.

Appointment and term of office—§§ 368. 369.

643. The Commissioners receive no compensation.

ARTICLE XVIII.

BOARD OF EXAMINERS.

§ 654. Chairman.
§ 655. Meetings.
§ 656. Records.
§ 657. Rules and regulations.
§ 658. Witnesses.
§ 659. Depositions.
§ 660. Claims for which appropriations have been made.
§ 661. Approval and drawing.
§ 662. If not approved.
§ 663. Claims provided for, but for which there is no appropriation.
§ 664. Same, as to unsettled claims.
§ 665. Time of meeting for action on claims referred to.
§ 666. Proof and examination of such claims.
§ 667. Report on such claims.
§ 668. Disqualifications.
§ 669. Treasurer to act in place of disqualified members.
§ 670. Restrictions on power of Board.
§ 671. Appeals.
§ 672. Controller not to draw warrant for claims not audited.
§ 673. Certain claims exempted.
§ 674. Board may prevent payment of Controller's warrants.
§ 675. Must examine books of Controller and Treasurer.
§ 676. Must count money in Treasury.
§ 677. Must make affidavit thereof.
§ 678. Controller and Treasurer must permit examination, etc.
§ 679. Printing Expert.
§ 680. Conversion of School Fund into bonds.
§ 681. Same.
§ 682. Same.
§ 683. Purchase of State bonds.
§ 684. Salary of members. (Repealed.)
§ 685. Salary of Clerk. (Repealed.)

654. The Governor, and in his absence the Secretary of *State, is* Chairman of the Board of Examiners.

Board of Examiners—members § 364. Clerk, Governor's Private Secretary is ex-officio, § 343. Auditing functions, §§ 414, 535, 553, 630, 3410, 3702. Certain duties prescribed in Stats. 1872, p. 118. Violation of duty is felony, Penal Code, § 441. Creation of, constitutional, 6 Cal. 364. Unconstitutional provisions in Acts relating to, 16 Cal. 12. Constituted a furnishing Board, see Stats. 1876, p. 314.

655. The semi-monthly meetings of the Board must be held at the State Capitol on the first and third Mondays in each month.

656. The Board must keep a record of all their proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record. And all claims must be entered on the minutes of the Board before the same shall be acted upon. [In effect March 30, 1874.]

Amendment 1874—added last sentence to section.

657. The Board may, in writing, establish rules and regulations not inconsistent with law for its government.

Basis of section—and of next two, Stats. 1858, p. 212.

658. The Chairman may issue subpœnas and compel the attendance of witnesses before the Board or any member thereof in the same manner that any Court in this State may; and whenever the testimony of any witness against a demand pending before them is material, the Chairman must cause the attendance of the witness before the Board, or a member thereof, to testify concerning the demand, and the Board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the Board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant.

Witnesses—see Code Civ. Proc., §§ 1878-1884. Production of, see Code Civ. Proc., §§ 1985-1997. Rights and duties, see Code Civ. Proc., §§ 2064-2070.

659. Each member of the Board may take depositions to be used before it.

Depositions—see Code Civil Proc., §§ 2019-2038.

660. Any person having a claim against the State for which an appropriation has been made, may present the same to the Board in the form of an account or petition, and the Clerk of the Board must date, number, and file such claim, and the Board must allow or reject the same in the order of its presentation. The Board may for cause postpone action upon a claim for not exceeding one month.

Basis of *section—Stats. 1853, p. 255.*

661. If the Board approve such claim they must indorse thereon, over their signatures, "Approved for the sum of —— dollars," and transmit the same to the office of the Controller of State; and the Controller must draw his warrant for the amount so approved in favor of the claimant or his assigns in the order in which the same was approved.

662. If the Board disapprove such caim they must cause the same to be filed with the records of the Board, with a statement showing such disapproval, and the reasons therefor.

663. If no appropriation has been made for the payment of any claim presented to the Board the settlement of which is provided for by law, or if an appropriation made has been exhausted, the Board must audit the same, and if they approve it, must transmit it to the Legislature with a statement of their approval.

Auditing functions—see under Board of Examiners, § 654n.

664. Any person having a claim against the State, the settlement of which is not otherwise provided for by law, must present the same to the Board of Examiners at least four months before the meeting of the Legislature, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.

Basis of section—Stats. 1870, p. 544.

665. On the first Monday of September preceding the meeting of each Legislature the Board must hold a session at the State Capitol for the purpose of examining the class of claims referred to in the preceding section, and may adjourn from time to time until their work is completed. Prior thereto they must cause a list and brief abstract of all claims filed with them to be made and published in some newspaper at Sacramento City for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the Board will proceed to examine the claims.

666. The Board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them, and report to the Legislature such facts and recommendations concerning them as they may think proper. In making their recommendations they may state and use any official or personal knowledge which any member of the Board may have touching such claims.

667. The Board must make up their report and recommendations at least thirty days before the meeting of the

Legislature. A brief abstract of their report, showing the claims rejected, and those, or the amounts thereof, allowed, must be published in a newspaper published at Sacramento City for such time as the Board may prescribe before the meeting of the Legislature.

668. No member of the Board must act upon any claim in which he is interested, or for expenditures incurred in his office, nor must he be present when the decision thereon is made.

669. When any member of the Board is disqualified from acting upon any claim, the State Treasurer must act in his stead.

State Treasurer—§§ 452–459.

670. The Board must not entertain, for the second time, a demand against the State once rejected by it or by the Legislature, unless such facts are presented to the Board as in suits between individuals would furnish sufficient ground for granting a new trial.

New trial—see Code Civ. Proc., §§ 656–662.

671. Any person interested, who is aggrieved by the disapproval of a claim by the Board, may appeal from the decision to the Legislature of the State, by filing with the Board a notice thereof, and upon the receipt of such notice the Board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the Legislature.

672. The Controller must not draw his warrant for any claim unless it has been approved by the Board, and when, hereafter, the Controller is directed to draw his warrant for any purpose, this direction must be construed as subject to the provisions of this section, unless the direction is accompanied by a special provision exempting it from its operation.

Controller's authority—to draw warrants, see § 433, subd. 17, and notes; preventing excess of, § 674.

Exempt from provisions of section—deficiency appropriation for Assembly Contingent Fund. Stats. 1881, p. 7; also appropriation for contingent expenses, Stats. 1881, p. 8.

673. Claims upon the Contingent Fund of either House of the Legislature, and for official salaries, are exempted from the operations of the provisions of the preceding twelve sections.

674. Whenever the Board has reason to believe that the Controller has *drawn or is about to* draw his warrant without

authority of law, or for a larger amount than the State actually owes, the Board must notify the Treasurer of State not to pay the warrant so drawn or to be drawn; and thereupon the Treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the Legislature.

Basis of section—Stats. 1858, p. 213.

675. As often as it may deem proper the Board must examine the books of the Controller and Treasurer, the accounts and vouchers in their offices, and count the money in the Treasury; and for that purpose they may demand, and the Controller and Treasurer must furnish without delay, all information touching the books, papers, vouchers, or matters pertaining to their offices.

General basis of section—Stats. 1858, p. 212; 1868, p. 296.

676. The counting of the moneys in the State Treasury must take place at least once a month, without the Board or any member thereof giving the Treasurer any previous notice of the day or hour of counting. The Board may, at any counting, place any sum in bags or boxes, and weigh each bag or box separately, and mark the same with the weight thereon plainly specified, and place thereon a seal, to be kept by them, and may at subsequent countings count or reweigh each bag or box separately, and estimate the contents of such bags or boxes as part of the money counted by them, without making a detailed count of its contents.

Basis of section—Stats. 1868, p. 296.

677. They must, at least once in each month, make and file in the office of the Secretary of State, and publish in some newspaper in Sacramento City, an affidavit showing:

1. The amount of money that ought to be in the State Treasury.
2. The amount and kind of money actually therein.

Basis of section—Stats. 1858, p. 212.

678. The Controller and Treasurer must permit the Board of Examiners to examine the books and papers in their respective offices; and the Treasurer must permit the moneys in the Treasury, without delay on any pretense whatever, to be counted whenever the Board may wish to make an examination or counting.

Basis of section—Stats. 1858, p. 212.

679. The Board must appoint a Printing Expert, who *must examine* and report to the Board all accounts for print-

ing presented by the State Printer or any other person, specifying whether the work has been executed in a workmanlike manner or not, and the amount for which the same should be allowed. The report is not conclusive on the Board, but is in aid of the discharge of their duties. The Expert must receive a salary of fifty dollars a month, payable on the last day of each month.

Basis of section—Stats. 1858, p. 212.

State Printer—now Superintendent of State Printing, § 526, *et seq.*

680. Whenever and as often as there is in the State Treasury the sum of ten thousand dollars, as proceeds of the sale of State school lands, the Board must invest the same in civil funded bonds of this State, or in bonds of the United States, at the lowest price at which they may be offered by the holders thereof, and as prescribed in the succeeding section.

Basis of section—Stats. 1858, p. 523.

State school lands—§§ 3494-3502.

681. The Board must advertise for thirty days in one daily newspaper published in each of the Cities of Sacramento and San Francisco, for sealed proposals for the purchase of civil bonds or bonds of the United States. At the expiration of thirty days from the first publication of the advertisement, the Board must open the bids at the time and place specified in the advertisement therefor, in the presence of the Treasurer and Controller of State. They may accept or reject all bids, at their pleasure; but if they accept any bids they must accept the bids offering such bonds at the lowest price; but no bids must be considered unless accompanied by the bonds.

Section founded—as well as next two, on Stats. 1868, p. 523.

Advertising for bids—compare as to Sac. County bonds, 48 Cal. 124.

682. The Board must thereupon certify the accepted bids to the Controller, who must draw his warrant in favor of the successful bidders for the amount respectively due, and the State Treasurer must pay the same from the proceeds of the sale of school lands; and the Board must deliver the bonds so purchased to the State Treasurer, who must keep them as a special School Fund deposit, the interest upon such bonds to be subject to such disposition as is provided in the title of this Code relating to common schools.

School funds—and taxes, general provisions relating to, §§ 1857-1861.

683. At any sale of civil bonds by the State Treasurer, the Board may become bidders and purchase bonds with the funds at their disposal; *and the appropriate* transfer of funds must

be made by the Controller and Treasurer on the books of their offices.

State bonds—redemption and payment of; Controller and Treasurer authorized to transfer funds for, Stats. 1881, p. 49.

684. Repealed. [In effect February 25, 1880. See § 499.]

685. Repealed April 23; in effect July 1, 1880.

ARTICLE XIX.

POWERS AND DUTIES OF OTHER EXECUTIVE OFFICERS.

§ 695. Vaccine Agent.
§ 696. Commissioner of Immigration.
§ 697. State Capitol Commissioners.
§ 698. Tide Land Commissioners. (Repealed.)
§ 699. Port Wardens.
§ 700. Harbor Commissioners.
§ 701. Pilots.
§ 702. San Francisco Marine Board. (Repealed.)
§ 703. Pilot Commissioners.
§ 704. Boards of Health.
§ 705. Board of Agriculture.
§ 706. Board of Equalization.
§ 707. Regents of University.
§ 708. State Board of Education.
§ 709. Trustees of Normal School.
§ 710. Officers of Libraries.
§ 711. Directors of State Prison.
§ 712. Officers of Insane Asylum.
§ 713. Trustees of Asylum for Deaf, Dumb and Blind.
§ 214. Trustees of State Burying Grounds.
§ 715. Yosemite and Big Tree Commissioners.

695. The powers and duties of the Vaccine Agent are prescribed in Title VII, of Part III, of this Code.

Vaccine Agent—§§ 2993, 2994.

696. Those of the Commissioner of Immigration are prescribed in Title VII, Part III, of this Code.

Commissioner of Immigration—§§ 2949-2968.

697. Those of the State Capitol Commissioners are prescribed by "An Act to provide for the construction of the State Capitol in the City of Sacramento," approved March twenty-ninth, eighteen hundred and sixty, and the Acts amendatory thereof, which are hereby continued in force.

State Capitol Commissioners—members of Board, §§ 343, 366. Stats. 1870, p. 447. Reports, §§ 332, 334, 335.

Statutes—relating to State Capitol, preserved, see Stats. 1860, p. 128; amd. Stats. 1861, p. 600; and Stats. 1870, p. 447. Since Codes, see Stats. 1873, pp. 635, 694, 887; 1874, pp. 309, 662, 903; Stats. 1874, p. 937, amd. by Stats, 1880, p. 346 or 107; Stats. 1880, p. 273 or 80; 1881, p. 37.

Secretary of State—is Superintendent of State Capitol. § 412.

698. Repealed. [In effect February 4, 1876. See § 365.]

699. Those of Port Wardens are prescribed in Title VI, of Part III, of this Code.

Port Wardens—see §§ 2501-2511.

700. Those of Harbor Commissioners are prescribed in Title VI, of Part III, of this Code.

Harbor Commissioners—see §§ 2520-2572.

701. Those of Pilots are prescribed in Title VI, of Part III, of this Code.

Pilots—see §§ 2429-2591.

702. Repealed. [In effect January 13, 1876. See § 363.]

703. Those of Pilot Commissioners are prescribed in Title VI, of Part III, of this Code.

Pilot Commissioners—see §§ 2429-2591.

704. Those of the Boards of Health are prescribed in Title VII, of Part III, of this Code.

Boards of Health—see §§ 2978-3083.

705. Those of the Board of Agriculture are prescribed in the special statute creating the Board.

Board of Agriculture—see § 2326.

706. Those of the Board of Equalization are prescribed in Title IX, of Part III, of this Code.

Board of Equalization—see §§ 3672-3705.

707. Those of the Regents of the University of California, in Chapter I, of Title III, of Part III.

Regents of University—see §§ 1425-1451.

708. Those of the State Board of Education are prescribed in Chapter III, of Title III, of Part III, of this Code.

State Board of Education—see §§ 1517-1522.

709. Those of the Trustees of the State Normal School are prescribed in Chapter II, of Title III, of Part III, of this Code.

State Normal School—§§ 1487-1507.

710. Those of the Trustees of the State Library, State Librarian, and Librarian of the Supreme Court Library, are prescribed in Chapter III, of Title V, of Part III, of this Code.

Library Trustees and Librarians—see §§ 2292-2316.

711. Those of the Directors of the State Prison are prescribed in Part III of THE PENAL CODE.

State Prison Directors—Penal Code, §§ 1573–1595; but see Act in Stats. 1880, p. 243 or 67, pursuant to Const. Cal., art. 10, and amd. by Stats. 1881, p. 81.

712. Those of the Directors and other officers of the Insane Asylum are prescribed in Chapter I, of Title V, of Part III, of this Code.

Officers of Insane Asylum—see §§ 2136–2200.

713. Those of the Trustees of the Asylum for the Deaf, Dumb, and Blind, are prescribed in Chapter II, of Title V, of Part III, of this Code.

Trustees of Asylum for Deaf, Dumb and Blind—see §§ 2254–2257.

714. Those of the Trustees of the State Burying Grounds are prescribed in Title VIII, of Part III, of this Code.

Trustees of State Burying Grounds—see § 3597.

715. Those of the Commissioners of the Yosemite Valley and the Mariposa Big Tree Grove are prescribed in Title VIII, of Part III, of this Code.

Yosemite and Big Tree Commissioners—see §§ 3384–3386.

CHAPTER IV.

Judicial Officers.

§ 726. Number, designation, and mode of election.

726. The number, designation, and mode of election of judicial officers are fixed in Title I, Part I, of THE CODE OF CIVIL PROCEDURE.

Judicial officers—election, etc., see Code Civ. Proc., §§ 40–42, 65–70, 110, 156–159.

Judicial Department—Const. Cal., art. 6. Functions independent, see Const. Cal., art. 3; 5 Cal. 43. Jurisdiction not to be controlled by Legislature; see under Power of Legislature, § 225*m*., sub-title Jurisdiction.

CHAPTER V.

Salaries of Justices of the Supreme Court and Superior Judges, and Officers connected with the Supreme Court.

§ 736. Salary of Justices of Supreme Court.
§ 737. Salary of Superior Judges.
§ 738. Same.
§ 739. Salaries of officers connected with the Supreme Court.

736. The annual salary of each Justice of the Supreme Court is six thousand dollars.

737. The annual salaries of the Judges of the Superior Courts of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, are four thousand dollars each, one-half of which shall be paid by the State, and the other half thereof by the county for which the Judge is elected, except that in the Counties of Yuba and Sutter, one-fourth of the salary of the Superior Judge shall be paid by each county. [Approved April 23; in effect July 1, 1880.]

738. The annual salaries of the Judges of the other Superior Courts are three thousand dollars each, one-half thereof payable by the State, and the other half thereof payable by the county for which the Judge is elected. [Approved April 23; in effect July 1, 1880.]

Salaries of Superior Court Judges—no forfeiture, merely postponement, by failure to decide all cases within the ninety days prescribed by Const. Cal. 1879, § 24, art. 6; Meyers v. Kenfield, Feb. 2, 1881. Appropriation for deficiency in, Stats. 1881, p. 21. Additional Superior Judge of Alameda County, salary of, see Act providing for, in Stats. 1881, p. 19.

739. The annual salaries of the officers connected with the Supreme Court are as follows:

The Reporter of the Decisions, twenty-five hundred dollars.

The Phonographic Reporter, three thousand dollars.

Each Secretary, sixteen hundred dollars.

Each Bailiff, twelve hundred dollars. [Approved April 23; in effect July 1, 1880.]

Reporter of Decisions—salary of, under amdt. 1880, pursuant to Const. Cal. 1879; see Smith v. Kenfield, Oct. 8, 1880, C. P. L. J. 524. Generally, see §§ 767, 768, 771, *et seq.*

Phonographic Reporter—generally, see §§ 769, 770.

Secretaries and bailiffs—appointment, etc., see Code Civ. Proc., §§ 265, 266.

CHAPTER VI.

Ministerial and other Officers connected with the Courts.

ARTICLE I. CLERK OF THE SUPREME COURT.
II. REPORTERS OF THE SUPREME COURT.
III. NOTARIES PUBLIC.
IV. COMMISSIONERS OF DEEDS.
V. OTHER OFFICERS.

ARTICLE I.

CLERK OF THE SUPREME COURT.

§ 749. Election and term of office.
§ 750. General duties.
§ 751. May appoint Deputies.
§ 752. Fees.
§ 753. Disposition of fees.
§ 754. Settlements, when and how made.
§ 755. Salary of Clerk.
§ 756. Salary of Deputies.
§ 757. Official bond.

749. The Clerk of the Supreme Court is elected at the same time the Governor is elected, and holds his office for the term of four years from and after the first Monday in December next succeeding his election.

Original foundation of article—Stats. 1850, p. 74; 1863, p. 215; 1870, p. 157.

Clerk of Supreme Court—Legislature to provide for election, etc., see Const. Cal., art. 6, § 14. Vacancy in office of, how filled, § 1001.

750. The Clerk of the Supreme Court must perform such duties as are prescribed in the Penal Code and Code of Civil Procedure, and such duties as may be required of him by the rules and practice of the Court.

Duties—to be fixed by Legislature, Const. Cal., art. 6, § 14. General analytical index of cases, to make, see Stats. 1873, p. 1002. Costs on appeal as to, 3 Cal. 212.

751. He may appoint five Deputies, two to reside at San Francisco, one at Los Angeles, one at the State Capital, and one Court-room Deputy, to accompany the Court at the direction of the Clerk. [In effect March 4, 1881.]

SEC. 2. The sum of six hundred and sixty-six and sixty-seven one-hundredths dollars is hereby appropriated out of any money in the State Treasury not otherwise appropriated, for the purpose of paying the salary of the Court-room Deputy in the foregoing section provided for, during the period of five months next succeeding his appointment. [In effect March 15, 1880.]

Salaries of deputies—§ 756.

752. He must collect in advance, in United States gold coin, the following fees: For filing the transcript on appeal, in each civil case appealed to the Supreme Court, fifteen dollars, in full for all services rendered in each case up to the rendering of the judgment or issuing of the remittitur, when no petition for rehearing has been filed; for filing petition for rehearing, five dollars, in full for all services in said cause thereafter, up to and including the remittitur to the Court below; for filing motion to dismiss appeal, upon Clerk's certificate, two dollars and fifty cents; for filing petitions for writs of mandate, prohibition, review, and all other original proceedings, ten dollars, in full for all services rendered in each cause; for filing orders extending the time to file transcripts, one dollar; for certificate of admission as attorney and counsellor, ten dollars; for filing each paper in writs of error to the Supreme Court of the United States, fifty cents; for making record in writs of error to the Supreme Court of the United States, and for copies of any record or document in his office, the sum of fifteen cents per folio, but this fee must not be taxed against the parties to suits for any paper or copies of papers necessary up to and including the remittitur; for comparing any document requiring a certificate, ten cents per folio; for each certificate under seal, one dollar. [Approved March 26, 1878.]

Dismissal of Appeal—on Clerk's certificate, former fee for, 36 Cal. 127.

753. All fees collected by him must be paid into the State Treasury, eighty per cent. thereof to the credit of the General Fund, and twenty per cent. thereof to the credit of the Supreme Court Library Fund. [Approved March 26, 1878.]

754. He is responsible and must account for, and in his settlement with the Controller must be charged with, the full amount of all fees collected or chargeable, and accruing in causes brought into the Court, for services rendered therein up to the time of each settlement, and must, at the end of every month, pay the same into the State Treasury. He must also, at the end of every month, render to the Controller of *State, in such* form as that officer prescribes, an account in

detail, under his own oath, of all fees chargeable and accruing in causes brought into Court and not included in his previous accounts rendered. His salary must not be allowed or paid until all fees so accruing, and for which he is chargeable, have been accounted for and paid over. [Approved March 26, 1878.]

755. The annual salary of the Clerk of the Supreme Court is three thousand dollars. [Approved April 23; in effect July 1, 1880.]

Salary of Clerk—under amdt. 1880, Gross v. Kenfield, Oct. 8, 1880, 6 P. C. L. J. 570; but see same case, Feb. 16, 1881. Withheld until fees settled for, § 754.

756. The annual salary of each of the Deputy Clerks is eighteen hundred dollars. [Approved March 26, 1878.]

757. The Clerk of the Supreme Court must execute an official bond in the sum of ten thousand dollars.

Official bond—see §§ 947-966.

ARTICLE II.

REPORTERS OF THE SUPREME COURT.

§ 767. Reporter of Decisions, appointment and term.
§ 768. Affidavit to be made by appointee. (Repealed.)
§ 769. Phonographic Reporter, appointment and term.
§ 770. Duties of Phonographic Reporter.
§ 771. General duties of Reporter of Decisions.
§ 772. Same.
§ 773. Reports, what to include.
§ 774. Justices must supervise publication.
§ 775. Proof sheets.
§ 776. Original papers.
§ 777. Style of reports.
§ 778. Publication by contract.
§ 779. Advertisement and award.
§ 780. Contract, what to require.
§ 781. Purchase of volumes for use of State.
§ 782. Publication by State Printer.

767. Superseded by Section 21, Article VI, of the Constitution.

Appointment by Reporter—Deputy may be appointed by Reporter, Stats. 1881, p. 9.

Publication of opinions—of Supreme Court, fundamental provision for, Const. Cal. art. 6, § 16.

Decisions of Supreme Court—requisites and scope, see Code Civ. Proc., §§ 49, 53.

768. Repealed. [*In effect March* 21, 1878.]

769. The Supreme Court may also, in like manner, appoint a Phonographic Reporter for the Court, to hold office at its pleasure.

770. It is the duty of the Phonographic Reporter to attend upon the Court during its sessions, and to:

1. Note the points made by counsel in oral arguments;
2. To take down all opinions of the Court delivered orally;
3. Write out his notes in longhand, upon the order of the Court, and deliver such writing to the Reporter of the Decisions of the Court;
4. Perform such other duties as may be imposed upon him by the Court or a Justice thereof.

SUBDIVISION 3. Deliver to Reporter of Decisions—see § 772.

771. The Reporter of the Decisions of the Supreme Court must prepare a report of such cases decided as he may by the Court be directed to report.

As by the Court directed—see § 773.

772. He must, from the notes delivered to him by the Phonographic Reporter, prepare a report of each of the cases included therein, and after preparing such report, must submit it to the Court for correction and approval.

773. Each report must be made in manner and form as the Court may direct.

774. The reports must be published under the supervision of the Court, and to that end each of the Justices must be furnished by the Reporter with proof sheets of each volume thirty days before its final publication.

775. Within thirty days after such proof sheets are furnished, the Justices may return them to the Reporter, with corrections or alterations, and he must make the corrections or alterations accordingly.

776. The Reporter may take the original opinions and papers in each case from the Clerk's office, and retain them in his possession not exceeding sixty days.

777. The Reports must be published in well-bound volumes, and must be printed on good book paper, in small pica leaded, and brevier, equal in quality of paper and binding to Volumes Thirty-three to Thirty-nine, inclusive, of California Reports. [In effect March 24, 1874.]

778. The Reporter shall have no pecuniary interest in the volumes of Reports, but they must be published under the supervision of the Court and Reporter, by contract, to be entered into by the Reporter, Secretary of State, and Attorney-General, with the person or persons who shall agree to publish and sell the said Reports, for a period of ten years, on the terms most advantageous to the State and the public, and at a rate not to exceed four dollars per volume of seven hundred pages. [In effect March 24, 1874.]

779. Before entering into said contract, it shall be the duty of the Secretary of State to advertise for proposals for the publication of said Reports, for thirty days, in one daily paper in Sacramento, and one daily paper in San Francisco. It shall be the duty of said Reporter, Secretary of State, and Attorney-General, to consider all proposals for the publication of said Reports which may be made to them, and to award the contract to the person or persons who may agree to publish and sell the same on the terms most advantageous to the State and public. [In effect March 24, 1874.]

780. The contract must require the publisher to print and publish each volume in the style required by section seven hundred and seventy-seven, within sixty days from the time at which the manuscript is delivered by the Reporter, to sell three hunred copies to the State at the price fixed in the contract, and to keep on hand and for sale, at the price stipulated in the contract, a sufficient number of copies of each volume to supply all demands for six years from the publication thereof, and to give bonds for the fulfilment of the terms of the contract, in the sum of ten thousand dollars. [In effect March 24, 1874.]

781. On the publication of each volume of Reports, the Secretary of State must purchase, for the use of the State, three hundred copies of said volume, at the price named in the contract, not exceeding four dollars per volume, and after having distributed the same, as required by section four hundred and ten, shall deposit the surplus copies, if any there be, in the State Library. [In effect March 24, 1874.]

782. If, after advertising as required by section seven hundred and seventy-nine, no proposals are received by the Secretary of State, agreeing to print, publish, and sell said volumes at a price not exceeding four dollars per volume, then the State Printer must print and bind twelve hundred copies of each volume, and deliver to the Secretary of State all the copies printed by him; and the Secretary of State must keep the copies of the edition *not distributed* under the provisions

of section four hundred and ten on sale at four dollars per volume, at retail, and at such wholesale price as may be fixed by the Governor, Controller, and Secretary of State, and must, at the end of each month, pay into the State Treasury the proceeds of all sales made by him. This Act shall not apply to any volume of Reports, the printing of which may have been commenced by the State Printer at the time the contract herein provided for is made. [In effect March 24, 1874]

ARTICLE III.

NOTARIES PUBLIC.

§ 791. Number of Notaries.
§ 792. Restrictions as to residence.
§ 793. Term of office.
§ 794. General duties of.
§ 795. Protests, evidence of facts stated.
§ 796. Records of, on death or resignation.
§ 797. Certified copies of records of a predecessor.
§ 798. Fees.
§ 799. Official bond.
§ 800. Certificate of filing bond and oath.
§ 801. Liabilities on official bond.

791. The Governor may appoint and commission Notaries Public as follows: Fifteen for each of the Counties of Alpine, Del Norte, Lake, Lassen, Marin, Mariposa, Modoc, Plumas, San Benito, San Mateo, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Ventura. Twenty for each of the Counties of Mono, San Diego, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Humboldt, Inyo, Kern, Mendocino, Merced, Monterey, Napa, Placer, San Bernardino, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Stanislaus, Tuolumne, Yolo, and Yuba. Twenty-five for each of the Counties of Sonoma, Tulare, Fresno, and Nevada. Thirty-five for each of the Counties of Alameda, Los Angeles, Sacramento, Santa Clara, San Joaquin, and for the City and County of San Francisco. Fifteen for each of the counties created subsequent to the creation of this Act. [In effect April 15, 1880.]

Additional Notary Public—for San Francisco, at Presidio, Stats. 1880, p. 346 or 106.

General foundation of sections—not amended in this article, Stats. 1862, p. 443.

792. Every person appointed as Notary Public must, at the time of his appointment, be an elector of the county for which he is appointed, and must continue to reside in such county.

Elector—qualifications of, § 1083.

Residence—§ 52.

793. The term of office of a Notary Public is two years from and after the date of his commission.

Removal from office—§ 796*a*.

Vacancies—and the modes of supplying them, §§ 996-1004.

Powers of successor—§§ 796, 797.

794. It is the duty of Notaries Public:

1. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other State, Government, or country, may be performed by Notaries;

2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, indorsed on or attached to the instrument;

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any Court, Judge, officer, or Board in this State;

4. To keep a record of all official acts done by them;

5. To keep a record of the parties to, date, and character of every instrument acknowledged or proved before them;

6. When requested, and upon payment of their fees therefor, to make and give a certified copy of any record in their office;

7. To provide and keep official seals, upon which must be engraved the arms of this State, the words "Notary Public," and the name of the county for which they are commissioned;

8. To authenticate with their official seals all official acts.

Notary Public—competency assumed, 10 Cal. 239. Official character of foreign; certificate of acknowledgment as prima facie evidence of, 16 Cal. 552. Property exempt from execution, see Code Civ. Proc., § 690, subd. 4.

SUBDIVISION 1. **Demand**—for acceptance or payment, protest as evidence of, § 795. Presentment for acceptance, Civil Code, §§ 3185-3189. Presentment for payment, §§ 3211-3214, § 3248. Excuse of presentment and notice, §§ 3218-3220.

Protest—of foreign bills, Civil Code, §§ 3225-3238; of promissory note, meaning of, 8 Cal. 636. Waiver of, Civil Code, § 3160. As evidence, § 795.

Notice of protest—duty of Notary to give, 6 Cal. 632. How given, Civil Code, § 3231; see Notice of Dishonor, Civil Code, §§ 3141-3151. Diligent inquiry as to residence sufficient, 33 Cal. 176. Form of, 8 Cal. 635. Meaning of, 8 Cal. 636. Fee for, § 738.

SUBDIVISION 2. **Acknowledgments**—of instruments, generally, Civil Code, §§ 1180-1207. Notary's authority to take, Civil Code, §§ 1181-1183; but formerly not out of State, 2 Cal. 498; presumed from certificate, 6 Cal. 552. Certificate of acknowledgment as proof of execution of instrument, 22 Cal. 563; 48 Cal. 435; 54 Cal. 480; fatal omission in, 10

Cal. 239; alteration or amendment not permissible, 11 Cal. 281; under private seal, 15 Cal. 372; 23 Cal. 573; before Code, need not show that contents communicated by Notary himself, 22 Cal. 663; 54 Cal. 484; defective, made prior to Civil Code, cannot be corrected by action thereunder, 53 Cal. 482; Notary's limited statutory powers as to, 11 Cal. 281.

SUBDIVISION 3. **Depositions**—see Code Civ. Proc., §§ 2019-2021 manner of taking in this State, see Code Civ. Proc. §§ 2031-2038. Formerly, Notary could not take for action within county, 2 Cal. 25, 32 Requisites of Notary's certificate to, 18 Cal. 330.

Affidavits—see Code Civ. Proc., §§ 2009-2015.

Oaths and affirmations—administration of. Generally, Code Civ Proc., §§ 2093-2097. By Notary, authorized, Code Civ. Proc. § 2093.

SUBDIVISIONS 4, 5. **Record**—to be kept, 8 Cal. 635.

SUBDIVISION 6. **Certified copy**—to furnish, 8 Cal. 635; and see Notarial certificate, § 795*n*.

SUBDIVISIONS 7, 8. **Official seals**—before obtained, private seal could be affixed, 15 Cal. 372; 23 Cal. 573.

795. The protest of a Notary, under his hand and official seal, of a bill of exchange, or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the Post Office nearest thereto, is prima facie evidence of the facts contained therein. [Approved March 30; in effect July 6, 1874.]

Notarial certificate—of protest, as evidence, formerly, 8 Cal. 635; did not need to show authority, 14 Cal. 408; scope of, under section, Kellogg v. Pac. Box Mfg. Co., April 29, 1881, 7 P. C. L. J. 457.

Protest—§ 794, subd. 1, note.

Official seal—§ 794, subds. 7, 8, and note.

Presentment—or demand, and non-payment, protest is evidence of, 5 Cal. 220.

Notice—of protest, see § 794, subd. 1, note.

Prima facie evidence—entry by officer is, see Code Civ. Proc., §§ 1920, 1926. Generally, see Code Civ. Proc. § 1833.

796. If any Notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the Clerk of the county, who must deliver them to the Notary's successor, when qualified.

Resignations, vacancies—and the mode of supplying them, §§ 996-1004.

Removal from office—by Governor during term, not authorized, 6 Cal. 291.

797. Every Notary having in his possession the records *and papers of his* predecessor in office may grant certificates

or give certified copies of such records and papers, in like manner and with the same effect as such predecessor could have done.

Certificates and certified copies—of records and papers, see §§ 794, 795, and notes.

798. The fees of Notaries are as follows: For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For recording every protest, one dollar.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, thirty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents.

For administering an oath or affirmation, fifty cents.

For every certificate, to include writing the same, and the seal, one dollar. [In effect March 16, 1874.]

Fee for giving notice of protest—allowed, 6 Cal. 632.

799. Each Notary must execute an official bond in the sum of five thousand dollars, which bond must be approved by the Judge of the Superior Court of his county, and filed and recorded as other official bonds of county officers. [In effect April 3, 1880.]

Notary's official bond—requisites, 6 Cal. 632; condition of, 10 Cal. 239; liability on, § 801 and note. Bonds of officers, generally, §§ 947–986.

800. Each Notary, so soon as he has taken his official oath, and filed his official bond, must transmit a certificate of the facts, under the hand and seal of the County Clerk, together with a copy of his official oath, signed by him with his own proper signature, to the office of the Secretary of State. [In effect March 26, 1878.]

Official oath—generally, §§ 904–910.

801. For the official misconduct or neglect of a Notary Public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained.

Neglect—what constitutes, 10 Cal. 239.

Measure of damages—for negligence, 10 Cal. 246.

ARTICLE IV.

COMMISSIONERS OF DEEDS.

§ 811. Governor to appoint.
§ 812. General duties of.
§ 813. Effect of acts done by Commissioners.
§ 814. Oath, when to be filed.
§ 815. Fees.
§ 816. List of Commissioners to be published.
§ 817. Copy of this Article to be transmitted to appointee.

811. The Governor may appoint in each State of the United States, or in any foreign State, one or more Commissioners of Deeds, to hold office for the term of four years from and after the date of their commission.

Commissioners of Deeds—see throughout this article, notes on Notaries in preceding article.

812. Every Commissioner of Deeds has power, within the State for which he is appointed:

1. To administer and certify oaths;
2. To take and certify depositions and affidavits;
3. To take and certify the acknowledgment or proof of powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record;
4. To provide and keep an official seal, upon which must be engraved the arms of this State, the words "Commissioner of Deeds for the State of California," and the name of the State for which he is commissioned;
5. To authenticate with his official seal all his official acts.

SUBDIVISION 3. Acknowledgments—out of State, see Civil Code, § 1182, subd. 3; before Code, not by Notary, 2 Cal. 498; but now see Civil Code, § 1182, subd. 4.

813. All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified by Commissioners of Deeds, have the same force and effect, to all intents and purposes, as if done and certified in this State by any officer authorized by law to perform such acts.

814. The official oaths of Commissioners of Deeds must be filed in the office of the Secretary of State within six months after they are taken.

815. The fees of Commissioners of Deeds are the same as those prescribed for Notaries Public.

816. The names of all persons appointed Commissioners must be published three times in some weekly newspaper published at the seat of government of the State.

817. The Secretary of State must transmit, with the commission to the appointee, a certified copy of this Article, and of Section 798.

ARTICLE V.

OTHER OFFICERS.

§ 827. Court Commissioners.
§ 828. Secretary and Bailiff of the Supreme Court.
§ 829. Phonographic Reporters.
§ 830. Clerks, Sheriffs, Coroners, and other county officers, etc.
§ 831. Attorneys and Counselors at Law.

827. The mode of appointment, powers, and duties of Court Commissioner are fixed by Chapter II., Title III., Part I., of THE CODE OF CIVIL PROCEDURE.

Court Commissioners—Code Civ. Proc., §§ 258, 259.

828. The mode of appointment, powers, and duties of the Secretary and Bailiff of the Supreme Court are fixed by Chapter II., Title IV., Part I., of THE CODE OF CIVIL PROCEDURE.

Secretaries and Bailiffs of Supreme Court—Code Civ. Proc., §§ 265, 266; salaries, § 739 of this Code.

829. The mode of appointment, powers, and duties of Phonographic Reporters are fixed by Chapter III., Title IV., Part I., of THE CODE OF CIVIL PROCEDURE, and Sections 769 and 770 of this Code.

Phonographic reporters—Code Civ. Proc., §§ 268-274. Of Supreme Court, salary, § 739 of this Code.

830. The mode of election of Clerks, Sheriffs, Coroners, and other county and township officers, is fixed by Part IV. of this Code.

County officers—election of, § 4109.

831. The admission of attorneys and counselors at law is provided for and their duties fixed in Chapter I., Title V., Part I., of THE CODE OF CIVIL PROCEDURE.

Attorneys and counsellors at law—Code Civ. Proc., §§ 275-299.

CHAPTER VII.

General Provisions Relating to Different Classes of Officers.

ARTICLE I. DISQUALIFICATIONS.
II. RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.
III. POWERS OF DEPUTIES.
IV. APPOINTMENT AND DURATION OF TERM.
V. NOMINATIONS AND COMMISSIONS.
VI. OATH OF OFFICE.
VII. PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.
VIII. SALARIES, WHEN TITLE IS CONTESTED.
IX. BONDS OF OFFICERS.
X. RESIGNATIONS, VACANCIES, AND THE MODE OF SUPPLYING THEM.
XI. PROCEEDINGS TO COMPEL DELIVERY OF BOOKS AND PAPERS.
XII. MISCELLANEOUS PROVISIONS.

ARTICLE I.

DISQUALIFICATIONS.

§ 841. Age and citizenship.
§ 842. Other disqualifications.
§ 843. County officer not to act as deputy.

841. No person is capable of holding a civil office who at the time of his election or appointment is not of the age of twenty-one years and a citizen of this State.

Persons—§§ 37, 50-52, 54-60.

Civil office—as distinguished from military, see as to executive officers, § 341; that of County School Superintendent is, 52 Cal. 36.

Over twenty-one—see Civil Code, § 25, subd. 1. Women eligible to educational offices, Stats. 1874, p. 356.

Citizenship—as requisite for judicial officers, Code Civ. Proc., §§ 156, 157, 159; of women over twenty-one years of age, qualification for educational offices, Stats. 1874, p. 356.

Citizens of this State—§ 51.

842. Provisions respecting disqualification for particular offices are contained in the Constitution and in the provisions of the Codes concerning the various offices.

Disqualification for holding office—by Const. Cal.: Bribery as, art. 20, §§ 10, 11; Duelling as, art. 20, § 2; Embezzlement or defalcation as, art. 4, § 20; Federal officers, of, art. 4, § 20, and Desty's Const. Cal. 250; Forgery as, art. 20, § 11; Governor, of, art. 5, § 3; while holding other office, art. 5, § 12; High crimes as, art. 20, § 11; Impeachment, judgment in as, art. 4, § 18; Judicial officers, of, for post of non-judicial character, art. 6, § 18; Legislature, members of, art. 4, § 4; what civil office of profit ineligible to, art. 4, § 19; if influenced by reward or promise thereof, art. 4, § 35; Lieutenant-Governor, from holding other office, art. 5, § 15; Malfeasance in office as, art. 20, § 11; Perjury as, art. 20, § 11. By Codes, judicial officers, Code Civ. Proc., §§ 156, 157, 159.

Sex not a disqualification—for any occupation, Const. Cal., art. 20, § 18; women eligible to educational offices, Stats. 1876, p. 356; female teachers to receive same compensation as males, Stats. 1874, p. 938.

Fees—what judicial officers not to receive, Const. Cal., art. 6, § 15.

843. No county officer must be appointed or act as the deputy of another officer of the same county, except in cases where the pay of the officer so appointed amounts to a sum less than seventy-five dollars per month. [In effect March 15, 1876.]

Powers of deputies—§ 865.

County officers—§ 4101 *et seq.*

ARTICLE II.

RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.

§ 852. Certain officers must reside in Sacramento.
§ 853. Absence from the State.
§ 854. Restrictions upon judicial officers.
§ 855. Restrictions upon county officers.

852. The following officers must reside at and keep their offices in the City of Sacramento:

The Governor; Secretary of State; Controller; Treasurer of State; Attorney-General; Surveyor-General; State Printer; Superintendent of Public Instruction; Justices of the Supreme Court; Clerk of the Supreme Court; Reporters of the Supreme Court; and Adjutant-General.

Origin of section—extension of Stats. 1854, p. 58.

Residence—rules for determining, § 52, and note. Generally, see notes to § 52. Right of Legislature to prescribe conditions for holding office, see Legislative control over offices, § 6a. Justices of Supreme Court, eligibility based on, see Code Civ. Proc., § 156. Other judicial officers, see § 854.

853. No officer mentioned in the preceding section must absent himself from the State for more than thirty days, unless upon *business of the State* or with the consent of the *Legislature.*

Absence from State—of judicial officers, forfeiture of office for, Const. Cal., art. 6, § 9; not vacancy to be filled by Executive, and Act authorizing same is unconstitutional, 2 Cal. 610. Of Governor, effect of, Const. Cal., art. 5, § 17.

Business of the State—absence from State on, not to affect residence of any person, Const. Cal., art. 20, § 12.

Consent of the Legislature—not to be given to absence of judicial officer, Const. Cal., art. 6, § 9.

854. Restrictions upon the residence of other judicial officers are contained in THE CODE OF CIVIL PROCEDURE.

Other judicial officers—restrictions on residence of, Code Civ. Proc., §§ 157-159.

855. Restrictions upon the residence of county officers are contained in Part IV of this Code.

County officers—restrictions upon residence of, §§ 4101, 4119.

District and township officers—like restrictions, § 4102.

ARTICLE III.

POWERS OF DEPUTIES.

§ 865. Powers of Deputies.

865. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

Deputies—appointment of, §§ 876, 894; oath of, § 910.

All necessary deputies—may be appointed by most county and township officers, § 4112.

Powers of deputies—extensive as those of their principals, 25 Cal. 184, but must be exercised in name of principals, 5 Cal. 449.

Ministerial officers—may appoint and act by deputies, 4 Cal. 188; 35 Cal. 711.

ARTICLE IV.

APPOINTMENT AND DURATION OF TERMS.

§ 875. Appointments, when not otherwise provided for.
§ 876. Deputies and subordinate officers.
§ 877. Number of deputies.
§ 878. Term of office, when not prescribed.
§ 879. Holding over until successor is qualified.

875. Every officer, the mode of whose appointment is not prescribed by the Constitution or statutes, must be appointed by the Governor.

Governor—to see that all offices filled, § 380, subd. 2; to make appointments mentioned in Code, § 380, subd. 3.

Legislature may direct—whether officer shall be elected or appointed, if no provision on the subject, etc, Const. Cal., art. 20, §4.

876. All assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, must be appointed by the officer or body to whom they are respectively subordinate.

Aliens—not to be appointed deputies or clerks, Stats. 1880, p. 116 or 23.

877. When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

Discretion of the appointing power—extensive in case of county officers, § 4112.

878. Every office of which the duration is not fixed by law, is held at the pleasure of the appointing power.

Similar Constitutional provisions—art. 20, § 16; and see Desty's Const. Cal. 275.

879. Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

Until successor qualified—provision applicable to office continued by Political Code, 43 Cal. 411.

ARTICLE V.

NOMINATIONS AND COMMISSIONS OF OFFICERS.

§ 889. Nominations to Senate must be in writing.
§ 890. Resolution of concurrence.
§ 891. Commissions by the Governor.
§ 892. Form of commissions.
§ 893. Other commissions.
§ 894. Appointment of deputies, etc., how made.

889. Nominations made by the Governor to the Senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

890. Whenever the Senate concurs in a nomination, its Secretary must immediately deliver a copy of the resolution of concurrence, certified by the President and Secretary, to the Secretary of State, and another copy, certified by the Secretary, to the Governor.

891. The Governor must commission :

1. All officers elected by the *people*, whose commissions are not *otherwise provided for;*
2. *All officers elected by the Legislature;*

3. All officers of the militia;
4. All officers appointed by the Governor, or by the Governor with the advice and consent of the Senate.
5. United States Senators.

Commission—completes appointment, 10 Cal. 38.

Governor's appointive power, etc.—see § 875*n*.

Register of appointments—Governor to cause to be kept, § 382, subd. 4.

892. The commissions of all officers commissioned by the Governor must be issued in the name of the people of this State, and must be signed by the Governor and attested by the Secretary of State, under the Great Seal.

Basis of section—Stats. 1863, p. 388; similar Constitutional provision, Const. Cal., art. 5, § 14.

893. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body, or by the person making the appointment.

894. The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing, filed in the office of the appointing power or the office of its Clerk.

Appointment of deputies—by whom made, § 876; filed where made by county officers, etc., § 4113.

ARTICLE VI.

OATH OF OFFICE.

§ 904. Oath, form of.
§ 905. Oath of Governor and Lieutenant-Governor.
§ 906. Oath of members of the Legislature.
§ 907. Oath, when taken.
§ 908. Oath, before whom taken.
§ 909. Oath, where filed.
§ 910. Oath of deputies.

904. Before any officer enters on the duties of his office, he must take and subscribe the following oath:

"I do swear [or affirm] that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability."

Provision Constitutional—see Const. Cal., art. 20, § 3; and see Desty's Const. Cal. 368.

905. *The* Governor and Lieutenant-Governor must take *the official oath in* the presence of both Houses of the Legisla-

ture, in Convention assembled, and an entry of the fact must be made upon the Journals of each House.

906. Members of the Legislature may take the oath of office at any time during the term for which they were elected.

907. Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given.

Qualification—of Judge by official oath as date of commencement of his term, 17 Cal. 20.

908. Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

Administration of oaths—and affirmations, Code Civ. Proc., §§ 2093-2097.

909. Every oath of office certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

First—The oath of all officers, whose authority is not limited to any particular county, in the office of the Secretary of State.

Second—The oath of all officers, elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the offices of the Clerks of their respective counties.

Third—Each Judge of a Superior Court and County Clerk must, so soon as he has taken and subscribed his official oath, file a copy thereof, signed with his own proper signature, in the office of the Secretary of State. [In effect April 3, 1880.]

910. Deputies, clerks, and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.

ARTICLE VII.

PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.

§ 920. Certain officers not to be interested in contracts.
§ 921. Nor purchasers or vendors at certain sales.
§ 922. Contracts in violation, voidable.

§ 923. Certain officers prohibited from dealing in scrip, etc.
§ 924. Auditing officers, duties of.
§ 925. Treasurer, duties of.
§ 926. When settlements must be withheld.

920. Members of the Legislature, State, county, city and township officers, must not be interested in any contract made by them in their official capacity, or by any body or Board of which they are members.

Basis of section—Stats. 1851, p. 522.

Officer interested in official contracts—liability for, Penal Code. § 71; see also 45 Cal. 199.

Misdemeanor in office—how punishable, 45 Cal. 200.

921. State, county, township, and city officers must not be purchasers at any sale, nor vendors at any purchase made by them, in their official capacity.

Basis of section—Stats. 1851, p. 522.

Penalty for violation—of section, Penal Code, § 71.

922. Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

923. The State Treasurer and Controller, the several county, city, or town officers of this State, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons whatever, any State, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such State, city, town, or corporation.

Section founded—on Stats. 1852, p. 64.

Liability for violation—of section, Penal Code, § 71.

924. Every officer whose duty it is to audit and allow the accounts of other State, county, city, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this Article.

False or fraudulent claim—presentation felonious, Penal Code, § 72.

Violation of any of the provisions—of article, information to cause suspension of settlement or payment, § 926.

925. Officers charged with the disbursement of public *moneys must not* pay any warrant or other evidence of in-

debtedness against the State, county, city, or town, when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this Article.

926. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this Article, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation, by the District Attorney of the county. In case there be judgment for the defendant upon such prosecution, the respective officer may proceed to settle, audit, or pay such account, as if no such affidavit had been filed. [Approved March 30; in effect July 6, 1874.]

ARTICLE VIII.

SALARIES OF OFFICERS WHEN TITLE IS CONTESTED.

§ 936. Title contested, salary must not be paid.
§ 937. Pendency of suit must be certified by the Clerk.

936. When the title of the incumbent of any office in this State is contested by proceedings instituted in any Court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

Article founded—on Stats. 1860, p. 108, which applied to State officers only.

Contesting elections—see Code Civ. Proc., §§ 1111-1127; for members of Legislature, this Code, §§ 273-283; for Governor or Lieutenant-Governor, this Code, §§ 288-295.

937. As soon as such proceedings are instituted, the Clerk of the Court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

ARTICLE IX.

BONDS OF OFFICERS.

§ 947. Time for filing bond.
§ 948. Approval, filing, etc., bonds of State officers.
§ 949. Bond of Secretary of State, where filed.
§ 950. Bonds of county and township officers.
§ 951. Record of official bond
§ 952. Approval must be indorsed on bond.
§ 953. Bond not to be filed before approval.
§ 954. Condition of bond.

§ 955. Justification of sureties.
§ 956. Sureties for less than the penal sum.
§ 957. Custody of official bonds.
§ 958. Form of bonds.
§ 959. Construction of bonds.
§ 960. Same.
§ 961. Suit on bonds.
§ 962. Same.
§ 963. Defects in form, approval, filing, etc., not to vitiate.
§ 964. Insufficiency of sureties.
§ 965. Form of additional bond.
§ 966. Force of original bond.
§ 967. Liability of officers and sureties.
§ 968. Separate judgments on bonds.
§ 969. Contribution between sureties.
§ 970. Discharge of sureties.
§ 971. Persons appointed to fill vacancies, bonds of.
§ 972. Release of sureties.
§ 973. Same.
§ 974. Same.
§ 975. Office declared vacant for want of official bond.
§ 976. Supplemental bond.
§ 977. Same.
§ 978. Same.
§ 979. Same.
§ 980. Effect of discharge of sureties.
§ 981. Provisions of Article apply to bonds of administrator.
§ 982. Bonds of receivers, assignees, etc.
§ 983. Actions on official bonds, effect of.
§ 984. Same.
§ 985. Bonds of deputies, clerks, etc.
§ 986. Bond of County Clerk, where filed.

947. Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

Mandatory character—of requirements of sections, 3 Cal. 125.

Time prescribed for filing oath—§ 907.

Otherwise expressly provided—by statute, 7 Cal. 394.

Effect of failure to give bond in time—3 Cal. 125; 7 Cal. 394, 432.

New bond for new term—though officer his own successor, 5 Cal. 107.

Presumption that bond executed—by holder of office, 5 Cal. 391.

Separate bonds for distinct offices—though held by same person, 9 Cal. 286; 25 Cal. 528; 38 Cal. 77; 55 Cal. 304; what are distinct offices, 30 Cal. 683; 38 Cal. 77.

948. Unless otherwise prescribed by statute, the official bonds of State officers must be approved by the Governor, and filed and recorded in the office of the Secretary of State.

Approval—indorsed on bond, § 952; defect in, see § 963.

Approval and filing—see § 950*a*.

Recording—§ 951.

949. *The* official bond of the Secretary of State must, after *it is recorded, be filed* in the office of the Treasurer of State.

950. Unless otherwise prescribed by statute, the official bonds of county and township officers must be approved by the Judge of the Superior Court, recorded in the office of the County Recorder, and then filed in the County Clerk's office. [In effect April 3, 1880.]

Otherwise prescribed by statute—Board of Supervisors, sufficiency of approval by, under special statute, 17 Cal. 509; cannot reject bond except for insufficiency, 25 Cal. 93; authorized to approve, bond can alone discharge surety, 29 Cal. 433.

Approval and filing—both essential to validity of official bond, 31 Cal. 289. Latter must be preceded by former, § 953.

Recording—§ 951.

County Clerk's bond—§ 986.

951. Official bonds must be recorded in a book kept for that purpose, and entitled "Record of official Bonds."

952. The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

953. No officer with whom any official bond is required to be filed must file such bond until approved.

Filing of official bond—is delivery to State, 31 Cal. 73; but held ineffectual as such, unless preceded by approval, 31 Cal. 291.

Duties of officer—with whom official bonds filed, § 957.

954. The condition of an official bond must be that the principal will well, truly, and faithfully perform all official duties then required of him by law, and also all such additional duties as may be imposed on him by any law of the State of California. Such bond must be signed by the principal and at least two sureties.

Condition of official bond—of Notary Public, need only follow general form, 6 Cal. 635; official acts, not private debts, or personal dealings, are basis of liability of sureties, 9 Cal. 72; 16 Cal. 66; faithful performance of duties infringed by Sheriff's seizure of wrong party's goods, 14 Cal. 196.

Additional duties—imposed by subsequent law, § 960.

Official bond not signed by principal—invalid, if joint, 14 Cal. 421; 21 Cal. 585; otherwise if joint and several, 14 Cal. 421; 17 Cal. 504. Objection on such ground, when too late, 32 Cal. 145.

955. The officer whose duty it is to approve official bonds required of State, county, or township officers must not accept or approve any such bond, unless each of the sureties severally justify before an officer authorized to administer oaths, as follows:

First—On a bond given by a State officer, that such surety is a resident and freeholder, or householder within this State; and on a bond *given by a county* or township officer, that such

surety is a resident and freeholder, or householder within such county, or within an adjoining county.

Second—That such surety is worth the amount for which he becomes surety, over and above all his debts and liabilities, in unincumbered property, situated within this State, exclusive of property exempt from execution and forced sale.

Third—A member of the Board of Supervisors shall not be accepted as surety upon the official bond of any county or township officer of his county; nor shall the Sheriff, Clerk, Tax Collector, Treasurer, Recorder, Auditor, Assessor, or District Attorney of the same county become sureties upon official bonds for each other. [Approved March 30, 1874.]

Third subdivision of section—added by amdt. 1874. Rest of section based on Stats. 1857. p. 167.

Justification of sureties—compare Code Civ. Proc., § 1057.

Informal justification—does not render bond void, 23 Cal. 21.

956. When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions of not less than five hundred dollars thereof, making in the aggregate at least two sureties for the whole penal sum. And if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specifically liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable.

Judgment against fractional sureties—separate judgment requisite on bond in which the obligation is joint and several for specific sums, though obligors sued jointly. 9 Cal. 233. Form of judgment against sureties liable for different portions of the penal sum, 25 Cal. 521; 29 Cal. 643.

957. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

958. All official bonds must be in form joint and several, and made payable to the State of California in such penalty and with such conditions as required by this Chapter, or the law creating or regulating the duties of the office.

Basis of section—modification of Stats. 1850, p. 74.

Joint and several bond—form which constitutes, 25 Cal. 521; form which does not constitute, 21 Cal. 585; separate judgments upon, when *proper, 9 Cal. 293; if* bond joint only, obligors cannot complain, and de-

fect does not invalidate (see § 963), 6 Cal. 632; failure of principal to sign does not invalidate, see § 954; judgments against defendants served, proper, 29 Cal. 429; administrator of deceased officer need not be joined in suit on, 17 Cal. 500.

State of California—People of, sufficiently certain obligee, 6 Cal. 632.

959. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

Basis of section—Stats. 1850, p. 75.

Execution—when admitted, 31 Cal. 66; what constitutes, 31 Cal. 66. Delivery, filing as, 31 Cal. 73, 291; production by obligee is sufficient evidence of, 48 Cal. 611.

Liability continues after term expired—before office turned over to successor, 45 Cal. 12.

Bond valid—though part of sureties signed on unfulfilled condition that others would sign, 48 Cal. 611.

Surety may stand on precise terms of his contract—strict doctrine sustained, 11 Cal. 215; 14 Cal. 421; 16 Cal. 66; qualified to mean that no forced construction shall be given to obligation, 17 Cal. 504.

Judgment against principal—not conclusive against sureties, 14 Cal. 204; but held otherwise as to administration bonds, 25 Cal. 223.

960. Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

Basis of section—Stats. 1850, p. 75.

Condition of official bond—to provide for additional duties, § 954.

Duties required by subsequent law—do not include new duties belonging to a distinct office, 9 Cal. 286.

961. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the State of California, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

Basis of section—Stats. 1850, p. 75.

Estoppel by bond—to deny official character of principal, 17 Cal. 500.

Party injured or aggrieved—may bring suit in own name, 31 Cal. 72.

962. No such bond *is void on the* first recovery of a judg*ment thereon; but suit may be afterwards* brought, from time

to time, and judgment recovered thereon by the State of California, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

Basis of section—Stats. 1850, p. 75.

Compare—as to bond of executor or administrator, Code Civ. Proc., § 1392.

963. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the State or party interested; and the State or such party may, by action in any Court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

Basis of section—Stats. 1850, p. 75.

Defects in form—do not invalidate, 6 Cal. 635; appearing in complaint, must be taken advantage of in time, 32 Cal. 145.

Defects in approval—cannot be set up by sureties as defense in action against them, 9 Cal. 286: do not affect sureties' liability, 29 Cal. 436; 32 Cal. 148.

Suggestion in complaint—defects not cured by, include absence of principal's signature, 21 Cal. 585, unless bond invalidated thereby, 9 Cal. 293: of lack of seal opposite principal's signature, justifies recovery against sureties, 31 Cal. 66.

964. Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the Judge, Court, Board, officer, or other person whose duty it is to approve the official bond of any officer, that the sureties or any one of them have, since such bond was approved, died, removed from the State, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the Judge, Court, Board, officer, or other person may issue a citation to such officer, requiring him, on a day therein named, not less than three nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the Judge, Court, Board, officer, or other person must make an order vacating the office, and the same must be filled as provided by law.

Basis of section—Stats. 1853, p. 223.

Discharge of sureties—only on proper proceedings, 29 Cal. 429, and *see* § 970; generally, see next note, also note on Proceedings against *defaulting officer.*

Insolvency of part of sureties—does not discharge others, 31 Cal. 67.

Vacating office—where surety applied for discharge, under early statute, 7 Cal. 432.

Proceedings against defaulting officer—failure to take, does not discharge sureties, 17 Cal. 500.

965. The additional bond must be in such penalty as directed by the Court, Judge, Board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

Basis of section—Stats. 1850, p. 74.

966. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

967. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

968. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively; but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

969. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover, in any Court of competent jurisdiction, of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other, and to the sums thus paid, respectively.

970. Whenever any sureties on the official bond of any officer wish to be *discharged* from their liability, they and *such officer may procure* the same to be done, if such officer

will execute a new bond with sufficient sureties in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability; but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the sureties in the original bond.

Discharge of sureties—§ 964*a*.

Release of sureties—see § 972.

Approval of new bond—under former statutes, 7 Cal. 432.

971. Any person appointed to fill a vacancy, before entering upon the duties of the office must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

Vacancies—and mode of supplying them, §§ 955-1004.

972. Any surety on the official bond of a city, town, county, or State officer, may be relieved from liabilities thereon afterwards accruing by complying with the provisions of the three sections following.

973. Such surety must file with the Judge, Court, Board, officer, or other person authorized by law to approve such official bond, a statement, in writing, setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor; which statement must be subscribed and verified by the affidavit of the party filing the same.

974. A copy of the statement must be served on the officer named in such official bond, and due return or affidavit of service made thereon as in other cases.

975. In ten days after the service of such notice, the Judge, Court, Board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge of all his official duties as required originally.

Discharge of sureties—§ 964*a*.

976. Whenever, from any cause, a surety on the official bond of any officer elected or appointed under the laws of this State withdraws from his bond or becomes insolvent, or from other cause becomes incompetent to remain as surety thereon, such officer may file a supplemental bond, executed and approved in the same manner as the original bond, for the amount for which the surety so withdrawing or incompetent was bound by the original bond.

977. The release, discharge, voluntary withdrawal, or incompetency of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

Liability of remaining sureties—not affected by insolvency of part, 31 Cal. 67; but held before this section that discharge of surety does release co-surety, 11 Cal. 220.

Discharge of sureties—§ 964a.

978. Whenever a surety on any official bond gives notice of intention to withdraw therefrom, or is removed, or becomes otherwise incompetent, the principal on the bond must, within ten days after such notice or disqualification, execute and file, subject to the same conditions as the original, a supplemental bond, wherein must be recited the names of the remaining original sureties, and the name or names of the new surety or sureties, and the respective amounts for which he or they become bound, who are substituted in lieu of the surety or sureties released or disqualified.

979. Whenever the original bond is given for an amount in excess of the sum required by law, if the withdrawal or removal of any surety does not reduce the bond below the amount required by law to be secured by sureties, then no supplemental or additional bond is required or necessary; and whenever any supplemental bond is so filed and approved, the officer with whom the bond is filed, or in whose office the same is recorded, must give ten days notice—by publication in some paper published in the county, or if there is no paper in the county, then in the county nearest thereto in which a newspaper is published, and in case of the bond of a State officer, in some paper at the City of Sacramento—of the fact of the filing of the bond and the name of the party withdrawing from the former and the substitute on the new bond; and until the filing and approval of the supplemental bond the sureties on the former bond are liable for all the acts of their principal.

980. No surety must be released from damages or liabilities for *acts, omissions, or* causes existing, or which arose

before the making of the order mentioned in Section 975, but such legal proceedings may be had therefor in all respects as though no such order had been made.

981. The provisions of this Article apply to the bonds of receivers, executors, administrators, and guardians.

Bonds of receivers—§ 982, and Code Civ. Proc., §§ 566, 567.

Bonds of executors and administrators—Code Civ. Proc., §§ 1387-1407; sureties released from liability by judgment under stipulation, made without their consent, 29 Cal. 96; administrators' bonds held exception to rule that judgment against principal not conclusive against sureties, 25 Cal. 223.

Bonds of guardians—Code Civ. Proc., §§ 1754, 1756, 1758, 1788, 1803-1805, 1807, 1809.

982. All bonds or undertakings given by trustees, receivers, assignees, or officers of a Court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of, and payable to, the State of California; and upon the order of the Court where such action or proceeding is pending, may be prosecuted for the benefit of any and all persons interested therein.

State of California—§ 958*n*.

983. When an action is commenced in any Court in this State for the benefit of the State, to enforce the penalty of, or to recover money upon, an official bond or obligation, or any bond or obligation executed in favor of the State of California, or of the people of this State, the attorney or other person prosecuting the action may file with the Court in which the action is commenced an affidavit, stating either positively or on information and belief, that such bond or obligation was executed by the defendant, or one or more of the defendants (designating whom), and made payable to the people of the State, or to the State of California, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the State; and thereupon the Clerk receiving such affidavit must certify to the Recorder of the county in which such real estate is situated the names of the parties to the action, the name of the Court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

Lis Pendens—Code Civ. Proc., § 409.

984. Upon receiving such certificate, the County Recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and

any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed, belonging to the defendant, or to one or more of such defendants, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the Clerk and Recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

985. Every officer or body appointing a deputy, clerk, or subordinate officer, may require an official bond to be given by the person appointed, and may fix the amount thereof.

Bond of deputy—compare 48 Cal. 612.

986. The official bond of the County Clerk shall, after being recorded, be filed in the office of the County Treasurer, and the safe-keeping of the same is hereby made the duty of the County Treasurer. [Approved March 27, 1874.]

Bonds of other county officers—§ 950.

ARTICLE X.

RESIGNATIONS, VACANCIES, AND THE MODE OF SUPPLYING THEM.

§ 995. Resignations, to whom made.
§ 996. Vacancies, how they occur.
§ 997. Notice of removal, by and to whom given.
§ 998. Vacancies in Legislature, how filled.
§ 999. Vacancies, how filled when not otherwise provided for.
§ 1000. Vacancies occurring during session of the Legislature.
§ 1001. Vacancies in certain State offices, how filled.
§ 1002. Vacancies in office of Harbor Commissioner or Superintendent of Public Instruction, how filled.
§ 1003. Vacancies in Board of Directors of Insane Asylum.
§ 1004. Power and duty of officers filling unexpired terms.

995. Resignations must be in writing, and made as follows:

1. By the Governor and Lieutenant-Governor, to the Legislature, if it is in session; and if not, then to the Secretary of State.

2. By all officers commissioned by the Governor, to the Governor.

3. By Senators and members of the Assembly, to the presiding officers of their respective Houses, who must immediately transmit the same to the Governor.

4. By all county and township officers not commissioned by the Governor, to the Clerk of the Board of Supervisors of their respective counties.

5. By all other appointed officers, to the body or officer that appointed *them*.

6. In all cases not otherwise provided for, by filing the resignation in the office of the Secretary of State.

Resignation—held effectual without its acceptance by the appointing power, 6 Cal. 26; but ineffectual if tendered by elected officer before he has qualified and entered upon the discharge of his duties, 25 Cal. 93; construction of term "incumbent" under former statute, 25 Cal. 99; of incumbent before expiration of term, creates vacancy, 14 Cal. 180.

996. An office becomes vacant on the happening of either of the following events before the expiration of the term:

1. The death of the incumbent.
2. His insanity, found upon a commission of lunacy issued to determine the fact.
3. His resignation.
4. His removal from office.
5. His ceasing to be an inhabitant of the State, or, if the office be local, of the district, county, city, or township for which he was chosen or appointed, or within which the duties of his office are required to be discharged.
6. His absence from the State, without permission of the Legislature, beyond the period allowed by law.
7. His ceasing to discharge the duties of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the State by permission of the Legislature.
8. His conviction of a felony, or of any offense involving a violation of his official duties.
9. His refusal, or neglect to file his official oath or bond within the time prescribed.
10. The decision of a competent tribunal declaring void his election or appointment.

Similar provisions—under Stats. 1863, p. 389, cited 25 Cal. 98.

Expiration of term—held to create no vacancy where officer continues to discharge duties of office, 49 Cal. 407; or has express power to hold over until successor qualifies, 37 Cal. 614 (reviewing cases in 3 Cal. 502; 6 Cal. 289, 509; 7 Cal. 524; 8 Cal. 1; 10 Cal. 1, 38; 28 Cal. 44.)

SUBDIVISION 1. **Death of incumbent**—incumbent defined, 25 Cal. 98.

SUBDIVISION 2. **Insanity**—notice to officer empowered to fill vacancy, § 997.

SUBDIVISION 3. **Resignation**—§ 995 and note.

SUBDIVISION 4. **Removal from office**—notice of, to officer empowered to fill vacancy, § 997. Actions for usurpation of an office, etc., Code Civ. Proc., §§ 802-810. Misfeasance in office, impeachment, etc., see subd. 8 and notes. Removal of civil officers otherwise than by impeachment, Penal Code, §§ 758-772.

SUBDIVISION 5. **Ceasing to be an inhabitant**—adjudication to such effect not necessary to make a vacancy, 55 Cal. 79. Residence, rules for determining place of, § 52 and notes; of officers, restrictions upon, §§ 852-855 and notes.

SUBDIVISION 6. **Absence from State**—§ 853 and notes. Permission of Legislature, when prevents vacancy, see subd. 7.

SUBDIVISION 7. **Three months' cessation of performance of *duties—absence from State*,** see note to subd. 6.

SUBDIVISION 8. **Conviction of felony or misdemeanor in office—Impeachment,** Const. Cal., art. 4, §§ 17, 18, and see Desty's Const. Cal. 248; also Penal Code, §§ 737–753; Court of, Code Civ. Proc., §§ 36–39. Removal of civil officers otherwise than by impeachment, Penal Code, §§ 758–772. Notice to officer empowered to fill vacancy, § 997.

SUBDIVISION 9. **Failure to qualify**—prevents effectual resignation, 25 Cal. 93; vacancy held not created by, 10 Cal. 28. Official oath, time prescribed for filing, § 907, and generally, see §§ 904–910. Bond, time prescribed for filing, § 947; failure to indorse approval on, does not make office vacant, 1 Cal. 519; excess of jurisdiction in declaring office vacant for failure to duly file new, 10 Cal. 344.

SUBDIVISION 10. **Declaration that election or appointment void**—see Actions for usurpations of an office, etc., subd. 4*n*. Notice to officer empowered to fill vacancy, § 997.

997. Whenever an officer is removed, declared insane, or convicted of a felony or offense involving a violation of his official duty, or whenever his election or appointment is declared void, the body, Judge, or officer before whom the proceedings were had must give notice thereof to the officer empowered to fill the vacancy.

998. Whenever a vacancy occurs in either House of the Legislature, the Governor must at once issue a writ of election to fill such vacancy.

Constitutional foundation of section—Const. Cal, art. 4, § 12.

999. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the Governor must fill such vacancy by granting a commission, to expire at the end of the next session of the Legislature or at the next election by the people.

Constitutional basis of section—Const. Cal., art. 5, § 8; cited 6 Cal. 220; 8 Cal. 12; 37 Cal. 641; discussed 20 Cal. 507; 37 Cal. 616 *et seq.*

Governor's power to fill vacancies—§ 380, subd. 3, and notes.

Vacancy—what constitutes, 2 Cal. 198, 204; 6 Cal. 26, 288; 7 Cal. 519; 8 Cal. 1; 10 Cal. 28; 37 Cal. 614, 639; 49 Cal. 407; when none caused by expiration of term, see Expiration of term, § 996*a*; power to fill, is that of appointment, 32 Cal. 77.

No mode provided by law—for filling vacancy; if otherwise, section (as found in the Constitution) does not apply, 20 Cal. 507.

Next election by the people—term of officer appointed to fill vacancy continues until, 47 Cal. 442; 52 Cal. 167.

1000. Vacancies occurring in office during the recess of the Legislature, the appointment to which is vested in the Governor and Senate, or in the Legislature, must be filled by appointment made by the Governor; but the person so appointed can only hold the office until the adjournment of the next session of the Legislature.

Basis of section—Stats. 1863, p. 399.

Vacancies—*see vacancy, § 999n.*

Appointment vested—in Legislature, see 37 Cal. 617 reviewing 6 Cal. 289; 8 Cal. 1; in Governor and Senate, 7 Cal. 519; 20 Cal. 507; 49 Cal. 497.

Until adjournment—of next session of Legislature, 37 Cal. 617; until new appointment made (under Stats. 1851), 20 Cal. 507.

1001. A vacancy in the office of either the Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, or Clerk of the Supreme Court, must be filled by a person appointed by the Governor, who shall hold his office for the balance of the unexpired term. [Approved April 1, 1876.]

Controller—special election to fill vacancy, must be preceded by Governor's proclamation, 52 Cal. 169.

1002. A vacancy in the office of either the Superintendent of Public Instruction or State Harbor Commissioner must be filled by a person appointed by the Governor.

State Harbor Commissioner—vacancy to be filled by Governor for unexpired portion of term, § 2520.

1003. Any person appointed to fill a vacancy in the Board of Directors of the Insane Asylum holds only for the unexpired term of his predecessor.

Basis of section—Stats. 1870, p. 868.

Vacancy in Board of Directors of Insane Asylum—how filled under former statute, 37 Cal. 639.

1004. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers, and is subject to all the liabilities, duties, and obligations of the officer whose vacancy he fills.

ARTICLE XI.

PROCEEDINGS TO COMPEL DELIVERY OF BOOKS AND PAPERS BY OFFICERS TO THEIR SUCCESSORS.

§ 1014. Possession of books and papers.
§ 1015. Proceedings to compel delivery of.
§ 1016. Attachment and warrant to enforce.

1014. Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent, by virtue of his office.

Books and papers—of former incumbent, in case of Notary Public § 796.

1015. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incum-

bent, any such books or papers, such actual incumbent may apply, by petition, to any Court of record sitting in the county where the person so refusing or neglecting resides, or to any Judge of the Superior Court residing therein, and the Court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegations and proof of the parties, and to order any such books or papers to be delivered to the petitioners. [In effect April 3, 1880.]

Penalty for refusal—see Penal Code, §§ 76, 77.

1016. The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the petitioner, by a warrant directed to the Sheriff or a Constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner.

Penalty for refusal—§ 1015a.

ARTICLE XII.

MISCELLANEOUS PROVISIONS.

§ 1026. Seals of executive officers.
§ 1027. Great Seal.
§ 1028. Executive and judicial officers may administer oaths.
§ 1029. Salaries of officers.
§ 1030. Office hours.
§ 1031. Signature of officers acting ex officio.
§ 1032. Records open to public inspection, exceptions.

1026. Except where otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this Code takes effect, and each of such officers must at once file a description and impression of such seal in the office of the Secretary of State.

Seal—defined, § 14; generally, see § 14, notes; great, § 1027 and note; of Inspector of Gas Meters, § 578; of Notary Public, § 794, subds 7, 8; of Commissioner of Deeds, § 812, subds. 4, 5; of Fire Department, § 3340.

1027. The Great Seal of the State is the one in use at the time of the adoption of this Code.

Great Seal—Const. Cal., art. 5, § 13; §§ 407, subd. 4, 408, subd. 3, 416, subd. 2.

1028. Every executive and judicial officer may administer and certify oaths.

Administration of oaths—Code Civ. Proc. 2093-2097.

1029. Unless otherwise provided by law, the salaries of officers must be paid out of the General Fund in the State Treasury, *monthly, on the last day* of each month.

1030. Unless otherwise provided by law, every officer must keep his office open for the transaction of business from ten o'clock A. M. until four o'clock P. M. each day, except upon holidays.

Holidays—§§ 10, 11.

1031. When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation must be in the name of the office the duties of which he discharges.

Basis of section—Stats. 1861, p. 139.

1032. The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any citizen of this State. In all actions for divorce, the pleadings and the testimony taken and filed in said actions shall not be by the Clerk with whom the same is filed, or the referee before whom the testimony is taken, made public, nor shall the same be allowed to be inspected by any person except the parties that may be interested, or the attorneys to the action, or by an order of the Court in which the action is pending; a copy of said order must be filed with the Clerk. In cases of attachment, the Clerk of the Court with whom the complaint is filed shall not make public the fact of the filing of such complaint, or of the issuing of such attachment, until after the filing of return of service of attachment. [Approved March 30; in effect July 6, 1874.]

Public writings open to inspection—Code Civ. Proc., § 1892.

Divorce—Civil Code, §§ 82-148.

Attachment—Code Civ. Proc., §§ 537-559.

TITLE II.

Of Elections.

CHAPTER I. GENERAL PROVISIONS RELATING TO ELECTIONS.
II. QUALIFICATIONS AND DISABILITIES OF ELECTORS.
III. REGISTRATION OF ELECTORS.
IV. ELECTION PRECINCTS.
V. BOARDS OF ELECTION.
VI. OPENING AND CLOSING THE POLLS.
VII. POLL LISTS.
VIII. ELECTION TICKETS AND BALLOTS.
IX. VOTING AND CHALLENGES.
X. CANVASSING AND RETURNING THE VOTE.
XI. CANVASS OF RETURNS; DECLARATION OF RESULT; COMMISSIONS AND CERTIFICATES OF ELECTION.
XII. ELECTIONS FOR ELECTORS OF PRESIDENT AND VICE PRESIDENT.
XIII. ELECTIONS FOR MEMBERS OF CONGRESS.
XIV. PRIMARY ELECTIONS.

CHAPTER I.

General Provisions Relating to Elections.

ARTICLE I. TIME OF HOLDING ELECTIONS.
II. ELECTION PROCLAMATIONS.
III. MISCELLANEOUS PROVISIONS.

ARTICLE I.

TIME OF HOLDING ELECTIONS.

§ 1041. General election, when to be held.
§ 1042. *Judicial election.* (Repealed.)
§ 1043. *Special elections*, when to be held.

1041. There must be held throughout the State, on the first Tuesday after the first Monday of November, in the year eighteen hundred and eighty, and in every second year thereafter, an election, to be known as the general election. [In effect April 16, 1880.]

Effect of Const. Cal. 1879—(and above section as amd. 1880) on time of election of officers of City and County of San Francisco; § 10, art. 22, held inapplicable to, Barton v. Kalloch, Sep. 28, 1880, 6 P. C. L. J. 330.

General Election—section fixes time of, 52 Cal. 169.

Time of holding elections—and place where held, are of substance and affect validity, 5 Cal. 343; 12 Cal. 352.

1042. Section one thousand and forty-two of said Code is hereby repealed. [In effect April 16, 1880.]

1043. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper Board or officer.

Special elections—are those to supply vacancies, 6 Cal. 26; 12 Cal. 409; 14 Cal. 180; 52 Cal. 169. Vacancies, § 996 and notes; also following sections. Elections held special under section, 52 Cal. 169; People v. Hoge (Freeholders for New Charter for San Francisco), Sep. 8, 1880, 6 P. C. L. J. 248.

Designated by the proper Board or officer—time must be, 52 Cal. 169; but not special character of election in express terms, 53 Cal. 701. Board of Election Commissioners of San Francisco entitled to order election of Freeholders for New Charter, People v. Hoge, Sep. 8, 1880, 6 P. C. L. J. 248.

Validity of special elections—must be authorized by some statute in force at the time, 47 Cal. 442; compare 6 Cal. 673. Proclamation of Governor as pre-requisite, § 1053, note. Particular instances where considered, 6 Cal. 76; 12 Cal. 409; 30 Cal. 337.

ARTICLE II.

ELECTION PROCLAMATIONS.

§ 1053. Election proclamations by the Governor.
§ 1054. Governor's proclamation, what to contain.
§ 1055. Publication and posting by Supervisors.
§ 1056. Election proclamation by Supervisors.

1053. At least thirty days before a general election, and whenever he orders a special election to fill a vacancy in the office of State Senator or member of Assembly, at least ten days before such special election the Governor must issue an election proclamation, under his hand and the Great Seal of the State, and transmit copies thereof to the Boards of Supervisors of the counties in which such elections are to be held. [In effect April 16, 1880.]

Election proclamation—when required by statute, is necessary pre-requisite to validity of election, 6 Cal. 26; 11 Cal. 49; 12 Cal. 411; 14 Cal. 180; 52 Cal. 169.

Section before amendment—applied to all special elections.

1054. Such proclamation must contain:

1. A statement of the time of election, and of the offices to be filled;

2. An offer of rewards, in the following form: "And I do hereby offer a reward of one hundred dollars for the arrest and conviction of any and every person violating any of the provisions of Title IV, Part I, of the Penal Code; such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of ten thousand dollars."

Provisions of Penal Code—§§ 41-62 on Crimes against the Elective Franchise.

1055. The Board of Supervisors, upon the receipt of such proclamation, may, in case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election; and in case of special elections to fill a vacancy in the office of State Senator or member of Assembly, the Board of Supervisors, upon receipt of such proclamation, may, in their discretion, cause a copy of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election. [In effect April 16, 1880.]

1056. Whenever a special election is ordered by the Board of Supervisors, they must issue an election proclamation, containing the statement provided for in Subdivision 1, of Section 1054, and must publish and post it in the same manner as proclamations issued by the Governor.

Section made applicable—to Election Commissioners of San Francisco by Registration Act of April 18, 1878; see People v. Hoge, Sept. 8, 1880, 6 P. C. L. J. 248.

Special election—§ 1043 and notes.

Election proclamation—§ 1053*a*.

ARTICLE III.

MISCELLANEOUS PROVISIONS.

§ 1066. Plurality to elect.
§ 1067. Proceedings on a tie vote other than for Governor.
§ 1068. Same, on tie vote for Governor or Lieutenant Governor.
§ 1069. Electors privileged from arrest, when.
§ 1070. Electors exempt from militia duty, when.
§ 1071. No fees for certificate of registration.
§ 1072. *Compensation of officers of election.*
§ 1072. Supervisors to have blanks prepared.

1066. The person receiving at any election the highest number of votes for any office to be filled at such election, is elected thereto.

Plurality elects—Const. Cal., art. 20, § 13.

1067. If at any election, except that for Governor or Lieutenant-Governor, two or more persons receive an equal and the highest number of votes, there is no choice, and a special election to fill such office must be ordered by the proper Board or officer.

Basis of section—Stats. 1850, p. 101.

Special election—§ 1043.

1068. In case any two or more persons have an equal and highest number of votes for either Governor or Lieutenant-Governor, the Legislature must, by joint vote of both Houses, choose one of the persons to fill such office.

Constitutional basis of section—see Const. Cal., art. 5, § 4.

1069. Electors are privileged from arrest, except for an indictable offense, during their attendance on the election, and in going to and returning from the same.

Constitutional provision—of same character, Const. Cal., art. 2, § 2.

1070. No elector is obliged to perform militia duty on the day of election, except in time of war or public danger.

Basis of section—see Const. Cal., art. 2, § 3.

1071. No fees must be charged for registration or certificates thereof.

1072. The compensation of members of Boards of Election and Clerks must be fixed and audited by the Board of Supervisors, and paid out of the County Treasury.

1073. The necessary printed blanks for poll lists, tally lists, lists of voters, oath, and returns, together with envelops in which to inclose returns, must be furnished by the Board of Supervisors to the officers of each election precinct at the expense of the county.

CHAPTER II.

Qualifications and Disabilities of Electors.

§ 1083. Qualifications of a voter.
§ 1084. Persons not entitled to vote.

1083. Every native male citizen of the United States, every male person who shall have acquired the right of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, and whose name shall be enrolled on the Great Register of such county, shall be a qualified elector thereof. [In effect April 16, 1880.]

Section conforms—closely (as amd. 1880) to Const. Cal. 1879, art. 2, § 1. Similar provision in Const. Cal. 1849, object of, 26 Cal, 178-79.

No property qualification—ever to be required for any person to vote, Const. Cal., art. 1, § 24.

Citizens—native and naturalized, § 51 and notes.

Residence—for voting purposes; rules for determining place of, § 1236. Only qualified residents can vote, Donnelly v. Potter, May 24, 1880, 5 P. C. L. J. 587. Legislature cannot empower party not local resident for prescribed period to vote, 26 Cal. 162. Computation of prescribed period of residence in county, 28 Cal. 135.

Great Register of County—name enrolled on, see Registration of electors, §§ 1094-1117.

1084. No native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privilege of an elector. [In effect April 16, 1880.]

Constitutional basis of section—as amd. 1880: proviso in Const. Cal. 1879, art. 2, § 1.

Native of China—provisions against Chinese. Const. Cal. 1879, art. 19; see Desty's Const. Cal. 364-366.

CHAPTER III.

Registration of Electors.

§ 1094. Great Register, re-registration.
§ 1095. Names of electors to be entered.
§ 1096. Substance of entry.
§ 1097. Rules governing entry.
§ 1098. Assessor's roll of electors.
§ 1099. What enrollment must show.
§ 1100. Duty of Clerk or Assessor relative to certain proofs.
§ 1101. Assessor must make monthly returns of his enrollment.
§ 1102. Duty of Clerk upon receipt of the return.
§ 1103. Affidavits must be filed in Clerk's office.
§ 1104. Persons not to be registered in different counties.
§ 1105. Cancellation of entry.
§ 1106. When entry must be canceled.
§ 1107. Clerk must give certificate of registration.
§ 1108. Persons refused registration may proceed by action.
§ 1109. Action to have registration canceled.
§ 1110. Parties to such actions.
§ 1111. Same.
§ 1112. Costs not to be recovered against the Clerk, except.
§ 1113. Clerk to make copy of Great Register.
§ 1114. Names arranged alphabetically and numbered.
§ 1115. Great Register must be printed.
§ 1116. Printed copies, how distributed.
§ 1117. Certified copy primary evidence.

1094. There must be kept, in the office of the County Clerk of each county, a Great Register; whenever deemed necessary the Board of Supervisors of any county may, by order, require a re-registration of the voters of said county, which said order shall be published in at least one newspaper published in said county for not less than six months preceding the next ensuing general election. Such re-registration shall conform in all respects to the provisions of this Code concerning original registration, except that any person applying for re-registration shall be entitled thereto upon showing that his name was enrolled and uncanceled on the former Great Register. [Approved March 30, 1878. See note to 1228.]

Re-registration—provision for, introduced by amdt. 1878.

San Francisco—still left under control of local law; see the amdt. in Stats. 1878, p. 27.

Exception—in last clause, dispenses with affidavit required of naturalized citizen by § 1097, subd. 3; Cohn v. Harvey, Sept. 30, 1880, 6 P. C. L. J. 431.

Registration in San Francisco—governed by Act creating Registrar of Voters and Board of Election Commissioners, Stats. 1878, p. 299.

Great Register in various counties—Acts concerning El Dorado (transcribing), Stats. 1878, p. 637; Fresno and other counties (new), Stats. 1878, p. 693; Sacramento (new), Stats. 1874, p. 795; Yolo (new), Stats. *1878, p. 554.*

1095. In the Great Register the Clerk must, as hereinafter provided, enter the names of the qualified electors of the county whose names are not already thereon.

Qualified electors—who are, § 1083 and notes.

1096. Such entry must show:

1. The name, at length;
2. The age, omitting fractions of years;
3. The country of the nativity;
4. The place of residence (giving the ward or precinct);
5. If naturalized, the time and place of naturalization; and,
6. The date of the entry of each person; each name must be numbered in the order of its entry.

Basis of section—condensation of Stats. 1868, p. 647.

In San Francisco—additional matters to be entered in Register, see § 17 of Act as to registration, etc., in Stats. 1878, p. 299.

1097. No person's name must be entered by the Clerk unless:

1. Upon a certificate of registration in another county, showing that such registration has been canceled, and upon proof by the affidavit of the party that he is an elector of the county in which he seeks to be registered.
2. Upon the returns of the Assessor of the county.
3. If a naturalized citizen, upon the production of his certificate of naturalization, which certificate must be issued ninety days prior to the succeeding election, or upon his own affidavit that it is lost or out of his possession, which affidavit must state the place of his nativity, and the time, and place, and Court of his naturalization, together with his affidavit that he has resided in the United States for five years, and in this State for one year next preceding the time of application, and that he would be an elector of the county at the next succeeding election.
4. If born in a foreign country, upon his affidavit that he became a citizen of the United States by virtue of the naturalization of his father while he was residing in the United States, and under the age of twenty-one years, and that he is or would be an elector of the county at the next succeeding election.
5. Upon the production and filing of a certified copy of the judgment of a Superior Court directing such entry to be made.
6. In other cases, upon the affidavit of the party that he is or would be an elector of the county at the next succeeding election.
7. In every case the affidavit of the party must show all the facts required to be stated in the entry on the register, except the date *and number of the entry*. [In effect April 16, 1880.]

SUBDIVISION 1. Registration in another county—must be canceled, § 1104.

Elector of the county—qualifications of electors, § 1083 and notes. Affidavit, subd. 7 of this section.

SUBDIVISION 2. Returns of Assessor—see §§ 1098-1103.

SUBDIVISION 3. Certificate of Naturalization—naturalization laws, papers, etc., see under Citizens of the United States, note to § 51, subd. 2.

Affidavit of loss, etc—not required for re-registration where name enrolled and uncanceled on former Great Register, Cohn v. Harvey, Sept. 30, 1880, 6 P. C. L. J. 431. Affidavit, see subd. 7 of this section.

1098. The Assessor of each county must keep a roll of electors, on which, and upon like proof as is required for entry upon the Great Register, he must enroll the name of any elector of the county making application to him for that purpose.

Proof required for entry—upon the Great Register, see § 1097

1099. Such enrollment must show the same facts as are required to be shown by the entry upon the Great Register.

Entry upon Great Register—facts to be shown by, see § 1096.

1100. The Clerk or Assessor must, upon every certificate of naturalization presented to him as evidence of citizenship, indorse and subscribe a statement of the time of presentation and of his action thereon.

Certificate of naturalization—see note to § 1097, subd. 3.

1101. At the end of every month the Assessor must return to the County Clerk a certified copy of all entries made upon his roll of electors during such month, and all affidavits made for the purpose of procuring such enrollment.

1102. Upon the receipt of such return, the Clerk must at once enter upon the Great Register the names contained and the statements made in such return.

1103. The Clerk must file and preserve all affidavits returned to him by the Assessor, or used before him for the purpose of obtaining registration.

1104. No person must cause himself to be registered or enrolled in one county when his registration in another remains uncanceled.

Punishment for fraudulent registration—Penal Code, § 42.

1105. There must be left opposite each name in the Great Register a blank for cancellation. Cancellation is made by writing in such blank the word "Canceled," and a statement *of the* reasons therefor.

When entry canceled—§ 1106.

1106. The Clerk must cancel the entry in the following cases:

1. At the request of the party registered.
2. When he knows of the death or removal of the person registered.
3. When the insanity of the person registered is legally established.
4. Upon the production of a certified copy of a judgment of the conviction of any elector of any infamous crime, or of the embezzlement or misappropriation of any public money, in full force against the person registered, or upon information of such conviction obtained as hereinafter provided.
5. Upon the production of a certified copy of a judgment directing the cancellation to be made.
6. Upon a certificate of the Board of Election of any precinct, sent up with the election returns, stating the death or removal, within their own knowledge, of the person registered.
7. When it appears by the returns made by the Board and Clerks of Election that the respective party did not vote during the next preceding two years at any general or special election.
8. The Clerk shall cancel upon the Great Register every name found thereon which is found upon the register of deaths, provided for in section three thousand and seventy-nine of this Code.
9. Every Judge before whom proceedings were had which result in any male person being declared incapable of taking care of himself and managing his property, and for whom a guardian of his person and estate is accordingly appointed, or which result in such person being committed to a State Insane Asylum as an insane person, shall file with the County Clerk a certificate of that fact, and thereupon the Clerk shall cancel the name of such person upon the Great Register, if found thereon.
10. The County Clerk shall also, in the first week of September, in each year, examine the records of the Courts having jurisdiction in cases of infamous crimes, and the embezzlement or misappropriation of public money within his county, and cancel upon the Great Register the names of all persons appearing thereon who shall have been convicted of an infamous crime, or of the embezzlement or misappropriation of public money in such Court, and which conviction shall have been carried into effect. [In effect April 16, 1880.]

Amendment 1874—added last four subdivisions, and amdt. 1880 introduced clauses as to embezzlement. Other changes by both amdts.

SUBDIVISION 9. Guardian and ward—Civil Code, §§ 236-258; Code Civ. Proc., §§ 1747-1802.

Committed to Insane Asylum—Civil Code, § 258. Guardians of insane and incompetent persons, Code Civ. Proc., 1763-1766.

1107. Upon the application of the party, in person or in writing, the Clerk must give him or his agent a certified copy of the entries upon the Great Register relating to such party.

1108. If the Clerk refuses to enter the name of any qualified elector of the county upon the Great Register, such elector may proceed by action in the Superior Court to compel such entry. [In effect April 3, 1880; re-enacted April 16, 1880.]

Rules governing entry—§ 1097.

1109. Any person may proceed by action in the Superior Court to compel the Clerk to cancel any entry made on the Great Register illegally, or that ought to be canceled by reason of facts that have occurred subsequent to the time of such entry; but if the person whose name is sought to be canceled be not a party to the action, the Court may order him to be made a party defendant. [In effect April 3, 1880; re-enacted April 16, 1880.]

Changes in section—Last clause added by amdt. 1874. Superior substituted for District Court by amdt. 1880.

When entry must be canceled—§ 1106.

Parties to civil actions—Code Civ. Proc., §§ 367-389.

1110. In an action under the authority of Section 1108, as many persons may join as plaintiffs as have causes of action.

Joinder of plaintiffs—generally, Code Civ. Proc., § 378.

Uniting causes of action—generally, Code Civ. Proc., § 427.

1111. In an action under the authority of Section 1109, the Clerk and as many persons as there are causes of action against may be joined as defendants.

Joining all parties interested—as defendants, in general, Code Civ. Proc., §§ 379, 382.

1112. Costs cannot be recovered against the Clerk in any action under the authority of this chapter, unless it is alleged in the complaint, and established on the trial, that the Clerk knowingly and wilfully violated a plain duty.

Costs—generally, Code Civ. Proc., § 1021-1039.

1113. On the first Monday of October, in each year in which there shall be a general or Presidential election, and on the thirtieth day prior to each general election held every two years thereafter, each County Clerk must make a copy of the *uncanceled entries* existing on the Great Register of their

respective counties. The Board of Supervisors of any county may, by order, provide for the preparation and distribution of township or precinct registers for each township, instead of copies of the Great Register. For the purpose of registration, and preparation of a new Great Register, or of township or precinct registers, and copies thereof, if ordered by the Board of Supervisors, the County Clerk must employ such assistants, and for such times, and at such compensation as shall, from time to time, be authorized by said Board, which shall be paid out of the County Treasury. Such order may be repealed and re-enacted as often as the Board of Supervisors may deem expedient; *provided*, that nothing in this section shall be held to repeal any election or registration law applicable to or in force in the City and County of San Francisco. [In effect April 16, 1880.]

San Francisco Election or Registration Law—see Registration in San Francisco, § 1094*n*.

Napa County—copies dispensed with, Stats. 1874, p. 515.

Special elections—registers for, see Act in Stats. 1878, p. 73.

1114. In such copy and registers the names must be arranged alphabetically, according to surnames, and must be numbered consecutively, from the first to the last name, inclusive. [Approved March 30; in effect July 6, 1874.]

1115. Within fifteen days after making such list, the Clerk must have printed a sufficient number of copies thereof to supply each election precinct in the county with not less than ten copies thereof, and fifty additional for every one thousand votes cast in the county at the next preceding general election, except that in the City and County of San Francisco the County Clerk must have printed a sufficient number of copies of each ward register to supply two hundred and fifty copies thereof for the first one thousand votes, or fraction thereof, cast in the ward at the next preceding general election, and fifty additional copies for each additional one thousand votes, or fraction thereof above five hundred; but in all the counties of this State, other than those of the first class, as classified by this Code, the Clerk of each of such counties, if the Board of Supervisors, in their discretion, so order, must, if there is a sufficient number of the register last printed on hand to provide not less than four copies for each precinct in such county, cancel the names of all persons thereon required to be canceled, and furnish the same to each precinct, together with the same number of copies of a supplement containing the uncanceled entries made upon the Great Register subsequent to the last publication thereof. [In effect March 24, 1876.]

Amendment 1876—added all of section beginning with words "except that in the City and County of San Francisco."

Registration in San Francisco—§ 1094*n*.

Classification of counties—under Code, § 4006.

1116. The Clerk must, as soon as such copies of the Great Register, or ward or township registers, are printed:

First—Post one copy in some public place in the Courthouse.

Second—Deliver, upon demand, one copy to each county and township officer in the county.

Third—Transmit and cause to be delivered not less than ten copies to each Board of Election in the county; but in cases where ward registers are printed, ten copies shall be delivered to each Board of Election in the respective wards, and one copy of all the registers to each Board of Election in the county.

Fourth—Preserve five copies in the office for the inspection of the public.

Fifth—Transmit to the State Library, Mercantile Library, Mechanics' Institute, and Odd Fellows' Library, of San Francisco, one copy each.

Sixth—Deliver one copy to each elector of the county, or respective ward, applying therefor, until the remainder of the edition printed is exhausted; *provided*, that nothing in this section, except the first, third, and fourth subdivisions thereof, shall apply to counties other than of the first class. [In effect March 24, 1876.]

SUBDIVISION 6. **Counties of first class—see Classification of counties, § 1115*n*.**

1117. A certified copy of an uncanceled entry upon the Great Register is prima facie evidence that the person named in the entry is an elector of the county. [Approved March 30; in effect July 6, 1874.]

Prima facie evidence—defined, Code Civ. Proc., § 1833.

CHAPTER IV.

Election Precincts.

§ 1127. Supervisors to establish election precincts.
§ 1128. Boundaries must be defined.
§ 1129. Board may alter, etc., precincts.
§ 1130. Limitations on powers given herein.
§ 1131. Board to designate place in precinct for holding election.
§ 1132. Proceedings where place not designated, etc.

1127. The Board of Supervisors of each county must establish a convenient number of election precincts therein.

Election precincts in San Francisco—see Act to regulate registration of voters and secure purity of elections, Stats 1878, p. 299.

Place of holding election—affects validity, § 1131*n*.

Election districts—under former statutes, 33 Cal. 55.

1128. In the order establishing precincts, the boundaries thereof must be defined.

1129. The Board may, from time to time, change the boundaries of, create new, or consolidate established precincts.

1130. The following limitations are imposed upon the powers given the Supervisors in this chapter:

1. No precinct must be established so as to embrace more than one township, nor in such manner that its exterior limits cross the exterior boundaries of any township, incorporated town or city, or any ward, district, or other territorial subdivision for which local officers are to be elected, except a school or road district.

2. No precinct must be established, nor must the boundaries of one already established be altered within thirty days next preceding a general or special election. [In effect April 16, 1880.]

1131. The Board must, at least fifteen days prior to an election, issue its order appointing Boards of Election, designating the house or place within the precinct where the election must be held, and the offices to be filled, naming and numbering, in numerical order, commencing with number one, the offices to be filled, unexpired terms being lastly designated. [Approved March 30; in effect July 6, 1874.]

Place of holding *elections—and time* when held, are of substance and *affect validity*, 5 *Cal. 343; 12 Cal. 352*; 31 Cal. 82.

1132. If the Board fail to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the Justices of the Peace residing in the precinct must meet two days before the election, and by an order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place. In the City and County of San Francisco, any three of the Justices of the Peace may discharge the duties imposed by this section, at least eighteen hours prior to the opening of the polls. [Approved March 30; in effect July 6, 1874.]

Before this enactment—failure held to invalidate election, 33 Cal. 55.

CHAPTER V.

Boards of Election.

§ 1142. Boards of Election, how appointed.
§ 1143. Judges not to be of same political party.
§ 1144. Proceedings on failure to appoint or attend.
§ 1145. Organization of Boards and general powers of Inspectors.
§ 1146. Judges and Clerks may administer oaths.
§ 1147. Clerks.
§ 1148. Board and Clerks to be sworn.
§ 1149. Board to post copies of Great Register.
§ 1150. Copies not to be torn nor defaced.

1142. When an election is ordered, the Board of Supervisors must appoint for each precinct, from the electors thereof, one Inspector and two Judges, who constitute a Board of Election for such precinct; and in the City and County of San Francisco the Board of Supervisors must also, prior to the election day, appoint for each precinct, from the electors thereof, an additional Inspector and two additional Judges, who, with the original Inspector and Judges, shall canvass the votes for such precinct, and who must be present at the closing of the polls; otherwise the Board of Election must appoint the additional Inspector and Judges, or supply the place of an absent member thereof. The original and additional Inspectors and Judges shall thenceforth constitute the Board of Election, the members relieving each other in the duties of canvassing the ballots, which may be conducted by at least half of the whole number; but the final certificates shall be signed by a majority of the whole. [Approved March 30; in effect July 6, 1874.]

Provision for failure—of Board to appoint election officers, § 1144.

In San Francisco—Boards of Election, see note to § 1127 on election precincts.

1143. The Judges appointed must not be members of the same political party.

Judges of Election—discretion, and limitation of powers, 5 Cal. 235.

1144. If the Board of Supervisors fail to appoint the Board of Election, or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct present at that hour may appoint the Board, or supply the place of an absent member thereof. [Approved *March 30; in effect July 6, 1874.*]

Appointment of Inspector—by judges instead of electors, held not to invalidate election, 31 Cal. 173.

1145. The Inspector is Chairman of the Election Board, and may:

1. Administer all oaths required in the progress of an election;

2. Appoint Judges and Clerks, if, during the progress of the election, any Judge or Clerk ceases to act.

1146. Any member of the Board, or either Clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

1147. The Board of Election for each precinct must, before opening the polls, appoint two electors to act as Clerks of Election. [In effect April 16, 1880.]

1148. Before opening the polls, each member of the Board and each Clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath.

Failure to be sworn—according to similar statute, held not to invalidate election, 12 Cal. 352.

1149. Before opening the polls, the Board must post in some separate convenient places, easy of access, not less than four printed copies of the Great Register of the county, as last printed, except in the City and County of San Francisco, wherein not less than four printed copies of the Register of the Ward shall be so posted. [Approved March 30; in effect July 6, 1874.]

Copies of Great Register—§ 1113 and notes.

In San Francisco—see § 1113a.

Special elections—copies of Great Register need not be posted, see § 4 of Act in Stats. 1878, p. 73.

1150. The copies so posted must be maintained during the whole time of voting, and must not in any manner be torn or defaced.

CHAPTER VI.

Opening and Closing the Polls.

§ 1160. Time of opening and closing the polls.
§ 1161. Recess. (Repealed.)
§ 1162. Ballot-box to be exhibited.
§ 1163. Proclamation at opening the polls.
§ 1164. Proclamation at closing the polls.

1160. The polls must be opened at one hour after sunrise on the morning of the election, and must be kept open until sunset, when the same must be closed, except in the City and County of San Francisco, wherein the polls must be opened at sunrise, and be kept open continuously until six o'clock and thirty minutes of the evening of the same day, when the same shall be closed. [In effect March 8, 1876.]

Notice of election for school tax—held illegal because not corresponding with section, 52 Cal. 72, 621.

Place of opening polls—and holding election, where different from that authorized by Board of Supervisors, renders election invalid and justifies rejection of the votes cast, 31 Cal. 82.

1161. Section eleven hundred and sixty-one of said Code is repealed. [Approved March 30; in effect July 6, 1874.]

1162. Before receiving any ballots the Board must, in the presence of any persons assembled at the polling place, open and exhibit and close the ballot-box; and thereafter it must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

1163. Before the Board receive any ballots, they must cause it to be proclaimed aloud at the place of election that the polls are open.

1164. When the polls are closed that fact must be proclaimed aloud at the place of election; and after such proclamation no ballots must be received.

CHAPTER VII.

Poll Lists.

§ 1174. Form of poll and tally lists.
§ 1175. Want of form not to vitiate.

1174. The following is the form of poll lists and tally lists to be kept by Boards and Clerks of Election:

POLL LISTS

Of the election held in the Precinct of ——, in the County of ——, on the —— day of ——, in the year A.D. one thousand eight hundred and ——. A. B., C. D., and E. F., Judges, and G. H. and J. K., Clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

NUMBER AND NAME OF ELECTORS VOTING.

No.	Name.	No.	Name.
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the numbers of electors voting at this election amounts to ——.

Attest:

G. H.,
J. K.,
Clerks.

A. B.,
C. D.,
E. F.,
Board of Election.

TALLY LISTS.

Names of persons voted for, and for what office, containing the number of votes given for each candidate:

Governor.	Representative in Congress.	Members of the Legislature.	
		Senate.	Assembly.

We hereby certify that A. B. had —— votes for Governor, and C. D. had —— votes for Governor; that E. F. had —— votes for Representative in Congress, etc.

G. H., J. K., Clerks.

A. B., C. D., E. F., Board of Election.

—[Approved March 30; in effect July 6, 1874.]

1175. No list, tally, paper, or certificate returned from any election, must be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this Title, if it can be satisfactorily understood.

CHAPTER VIII.

Election Tickets and Ballots.

§ 1185. Ticket defined.
§ 1186. Ballot defined.
§ 1187. Tickets must be uniform.
§ 1188. Secretary of State to keep paper for tickets.
§ 1189. Must supply such paper to any person on application.
§ 1190. Disposition of moneys collected from sale of paper.
§ 1191. Form of ballot.
§ 1192. Ballots not to be given to any person within certain limits.
§ 1193. Tickets and ballots not to be folded or unfolded within certain limits.
§ 1194. Contents of tickets or ballots not to be exhibited within certain limits.
§ 1195. Persons not to be asked to disclose contents of ticket or ballot.
§ 1196. Ballots to have no marks on outside.
§ 1197. Ballot to have no marks by which it can be told who voted it.
§ 1198. Tickets, how to be folded.
§ 1199. Tickets not to be folded so as to indicate their contents.
§ 1200. Tickets folded together must be rejected.
§ 1201. Ballots not to be rejected for obscurity in the name of person or office.
§ 1202. When more persons are designated for an office than are to be chosen, ballot to that extent must be rejected.
§ 1203. Written and printed names for the same office, which to be rejected.
§ 1204. Printed tickets not to be erased but by lead pencil or ink.
§ 1205. Two votes on same ballot for same person must be counted as one.
§ 1206. Marked ballots to be rejected.
§ 1207. Same.
§ 1208. Ballots not conforming to requirements of law must be rejected.
§ 1209. Rejected ballots to be indorsed.
§ 1210. Rejected ballots must be preserved.
§ 1211. Ballots not rejected but objected to must be indorsed.
§ 1212. Ballots not in compliance with law not to be received.

1185. A ticket is a paper upon which is written or printed the names of the persons for whom the elector intends to vote, with a designation of the office to which each person so named is intended by him to be chosen.

1186. A ballot is a ticket folded in such a manner that nothing written or printed thereon can be seen.

Ballot—all elections to be by, Const. Cal., art. 2, § 5; what constitutes, 28 Cal. 124.

1187. *Every* ticket must be of paper uniform in size, *color, weight, texture,* and appearance.

1188. The Secretary of State must provide and keep constantly on hand a sufficient quantity of paper, uniform in color, weight, texture, and appearance, without marks of any kind thereon, to supply the demand for paper for tickets.

1189. He must, upon payment of the cost thereof and ten per cent. profit, furnish such paper to every person who may apply therefor, and who makes and files with him an affidavit that such paper is to be used in providing tickets to be used as ballots at any election next to ensue.

1190. The sum collected by him for paper so sold must be paid into the State Treasury, and ten per cent. of such sum must be credited to a Fund to be kept in the Treasury, and known as the "Election Reward Fund."

1191. No ticket must be used at any election, or circulated on the day of election, unless:

1. It is written or printed on paper furnished by the Secretary of State, or upon paper in every respect precisely like such paper.

2. It is five inches in width, or within one-fourth of an inch of such width. If not more than fifty offices are designated to be filled, it is twelve inches in length, or within one-half of an inch of such length. If more than fifty offices, and not more than eighty offices, are designated to be filled, it is eighteen inches in length, or within one-half of an inch of such length. If more than eighty offices are designated to be filled, it is twenty-four inches in length, or within one-half of an inch of such length.

3. If printed, the names of the persons voted for, and the offices designated, are printed in black ink, and in long primer capitals—the names of the offices in small capitals, and of the persons in large capitals—and both without spaces, except between the different words or initials in each line, and between the numbers and initials.

4. If printed, the same margin is left above the printed matter as below it.

5. If printed, the lines are straight, and the matter double leaded with six to pica leads. The word "For" comprises the top line, the margins both sides of it being equal in size. The line after the top one commences with the figure one, then follows immediately on the same line the name of the first office designated by the Board of Supervisors in its order, issued under section one thousand one hundred and thirty-one; and lastly, on the same line, the name of the person voted for. Each subsequent line commences with the figure next in numerical order, and such number is in like manner immediately followed by the name of the office designated,

and the person voted for; so that the offices shall appear upon the ticket in the order designated by the Board of Supervisors, and be numbered in numerical order, commencing with the number one. The numbers are in a straight line from top to bottom, and are within one-quarter of an inch of the left hand edge of the ticket; so that the blank space for substituted names shall be on the right hand side of the ticket. The ticket shall be substantially in the following form:

FOR—

One—STATE SENATOR, FRANK COWPER.

Two—STATE SENATOR, PHILIP ROSS.

Third—MEMBER OF ASSEMBLY, A. S. WARDEN.

Fourth—MEMBER OF ASSEMBLY, WASHINGTON SWIFT.

Five—MEMBER OF ASSEMBLY, CALEB T. HOLIDAY.

—[Approved March 30; in effect July 6, 1874.]

Ballot not conforming to section—disposition of, § 1208; but held not to apply except to subd. 7 of this section, 46 Cal. 404.

Supplementary provisions—to those in section: Vignettes, inscriptions, additional requirements, manner of voting, etc., see Act to prevent circulation of bogus tickets and fraud upon voters, Stats. 1878, p. 180, and amdts. to same (not affecting San Francisco law) in Stats. 1878, p. 26.

1192. No ticket or ballot must, on the day of election, be given or delivered to, or received by, any person, except the Inspector, or a Judge acting as Inspector, within one hundred feet of the polling place.

1193. No person must, on the day of election, fold any ticket or unfold any ballot which he intends to use in voting, within one hundred feet of the polling place.

1194. No person must, on the day of election, within one hundred feet of the polling place, exhibit to another, in any manner by which the contents thereof may become known, any ticket or ballot which he intends to use in voting.

1195. No person must, on the day of election, within one hundred feet of the polling place, request another person to exhibit or disclose the contents of any ticket or ballot which such other person intends to use in voting.

1196. No ballot must be used at any election, or circulated on the day of any election, having any mark or thing on the back or outside thereof, whereby it might be distinguished *from any other ballot* legally used on the same day.

1197. No ballot or ticket must be used or circulated on the day of any election, having any mark or thing thereon by or from which it can be ascertained what persons, or what class of persons, used or voted it, or at what time in the day such ballot was voted or used. [Approved March 26; in effect first Monday in July, 1874.]

Freedom from mark or device—see § 1191, subd. 7, and notes to that section; also §§ 1206, 1207.

1198. Every ticket, when used as a ballot, must be folded crosswise from the center, and as follows: if twelve inches long, four times; if eighteen inches long, five times; and if twenty-four inches long, five times, and must be pressed flat. [Approved March 30; in effect July 6, 1874.]

1199. No ticket must be folded in a manner to indicate its contents when used as a ballot.

1200. If in the ballot-box two tickets are found folded together in the form of a ballot, they must both be rejected.

1201. No ballot or part thereof must be rejected by reason of any obscurity therein in relation to the name of the person voted for or the designation of the office, if the Board, from an inspection of the ballot, can determine the person voted for and the office intended.

1202. If the names of more persons are designated on any ballot found in the ballot-box for the same office than are to be chosen for such office, then, except in the cases provided for in the next section, all the names designated for such offices must be rejected, and the fact of such rejection, and the reasons therefor, must at the time of such rejection be noted on the ballot and signed by a majority of the Election Board.

1203. When upon a ballot found in any ballot-box, a printed name and a name written with ink or with pencil appears, and there are not so many persons to be chosen for the office, the printed name must be rejected and the written one counted, and the fact must at the time be noted on the back of the ballot, and such note must be signed by a majority of the Election Board.

Written words control printed—generally, Code Civ. Proc. § 1862.

1204. When upon a ballot found in any ballot-box a name has been erased and another substituted therefor, in any other manner than by the use of a lead pencil or common writing ink, the substituted name must be rejected and the name erased, if it can be ascertained from an inspection of the

ballot, must be counted, and the fact thereof must be noted upon the ballot, and such note must be signed by a majority of the Election Board.

1205. If a ballot is found in any ballot-box containing the name of the person and the office for which he is designated, or either, two or more times, it must not for that reason be rejected; it must be counted as one ballot.

Section conforms—to 28 Cal. 124.

1206. When a ballot found in any ballot-box bears upon the outside thereof any impression, device, color, or thing, or is folded in a manner designed to distinguish such ballot from other legal ballots deposited therein, it must, with all its contents, be rejected.

No mark or device on outside—§ 1191, subd. 7.

Folding—not to indicate contents, § 1199; also see § 1191, subd. 7.

Rejection—on like ground, mentioned as proper, 46 Cal. 407,

Designed to distinguish ballot—discoloration from ink used in scratching, not so designed, and not to cause rejection, 51 Cal. 273.

1207. When a ballot found in any ballot-box bears upon it any impression, device, color, or thing, or is folded in a manner intended to designate or impart knowledge of the person who voted such ballot, it must, with all its contents, be rejected.

Freedom from mark or device—§ 1197*a*.

Folding—not to indicate contents, § 1206*a*.

1208. When a ballot found in any ballot box does not conform to the requirements of Section 1191, it must, with all its contents, be rejected.

Rejection—proper only for violation of provision of § 1191 (like subd. 7 thereof), which is within voter's control, 46 Cal. 404.

1209. Whenever the Board of Election rejects a ballot, it must at the time of such rejection cause to be made thereon and signed by a majority of the Board an indorsement of such rejection and of the causes thereof.

1210. All rejected ballots must be preserved and returned in the same manner as other ballots.

1211. Whenever a question arises in the Board as to the legality of a ballot, or any part thereof, and the Board decide *in favor of the legality*, such action, together with a concise *statement of the facts that* gave rise to the objection, must be *indorsed upon the ballot* and signed by a majority of the Board.

1212. The Board must refuse to receive or to allow to be deposited in the ballot box any ballot offered, if it is apparent that it is not in compliance with the provisions of this Chapter.

CHAPTER IX.

Voting and Challenges.

§ 1224. Voting, when to commence and continue.
§ 1225. Manner of voting.
§ 1226. Announcement of voter's name, etc.
§ 1227. Putting ballot in box.
§ 1228. Record that person has voted, how kept.
§ 1229. Same.
§ 1230. Grounds of challenge.
§ 1231. Proceedings on challenge for want of identity.
§ 1232. Same, on challenge for non-residence in State.
§ 1233. Same, on challenge for non-residence in precinct.
§ 1234. Same, on challenge for having before voted.
§ 1235. Same, for conviction of crime or defalcation.
§ 1236. Challenges, how determined.
§ 1237. Same.
§ 1238. If person refuses to be sworn, vote to be rejected.
§ 1239. Rules for the determination of questions of residence.
§ 1240. Term of residence, how computed.
§ 1241. Rules must be read, if requested.
§ 1242. Proceedings upon determination of challenge.
§ 1243. List of challenges to be kept.

1224. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open.

1225. The person offering to vote must hand his ballot to the Inspector, or to one of the Judges acting as Inspector, and announce his name and the number affixed to it on the register in use at the precinct where he offers his vote; *provided*, that in incorporated cities and towns the said person shall also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same. [Approved March 30, 1878; see note to § 1227.]

Announce his number—not required at special elections, see § 5 of Act in Stats. 1878, p. 73.

Register in use—printed copies to be posted, § 1149; copies not to be torn or defaced, § 1150.

Election and registration law for San Francisco—see Act creating Board of Election Commissioners, etc., Stats. 1878, p. 299; not to be affected by amdt. 1878 to this section, see note to text of § 1227; clerical assistants of Registrar, 55 Cal. 651.

1226. The Inspector, or Judge acting as such, must receive the ballot, and before depositing it in the ballot-box must, in an audible tone of voice, announce the name and reg-

ister number; *provided*, that in incorporated towns and cities the said Inspector, or Judge acting as such, shall also announce the residence of the person voting, and the same shall be recorded on the poll list by the Poll Clerk. [Approved March 30, 1878. See note to § 1227.]

Amendment 1878—not to affect local law for San Francisco, described in note to § 1225.

1227. If the name be found on the register in use at the precinct where the vote is offered, and the vote is not rejected upon a challenge taken, the Inspector, or Judge acting as such, must, in the presence of the Board of Election, place the ballot, without opening or examining the same, in the ballot-box; and no person shall be allowed to vote whose name is not on said register in use at the precinct. [Approved March 30, 1878.]

[NOTE.—The Act of March 30, 1878, amends §§ 1225, 1226, 1227, 1228, 1094, and 1113, and adds: Before the fifth day of August, in each year in which there shall be a general or Presidential election, each County Clerk must make a copy of the uncanceled entries existing on the Great Register on the preceding first day of August. The Board of Supervisors of any county may, by order, provide for the preparation and distribution of township or precinct registers for each township, instead of copies of the Great Register. For the purposes of registration and preparation of a new Great Register, or of township or precinct registers and copies thereof, if ordered by the Board of Supervisors, the County Clerk must employ such assistants, and for such times, and at such compensation, as shall, from time to time, be authorized by said Board, which shall be paid out of the County Treasury. Such order may be repealed and re-enacted as often as the Board of Supervisors may deem expedient. But for later enactment, see § 1113.]

Nothing in this Act shall be so construed as to repeal by implication any special election or registration law applicable to the City and County of San Francisco alone; but this Act shall be so construed as if passed prior thereto. [Approved March 30, 1878.]

Amendment 1878—effect of, see § 1226a.

Challenges—§ 1230 *et seq.*

1228. When the ballot has been placed in the box, one of the Judges must write the word "Voted" opposite the number of the person on the printed copy of the register. [In effect April 16, 1880.]

Printed copy of Register—§ 1115.

Write the word "voted"—letter "V" may be substituted at special elections, see § 3 of Act in Stats. 1878, p. 73.

1229. Each Clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order of voting.

Official entry—as prima facie evidence of facts stated therein, Code Civ. Proc., § 1926.

1230. A person offering to vote may be orally challenged by any elector of the county upon either or all of the following grounds:

1. That he is not the person whose name appears on the register.
2. That he has not resided within the State one year next preceding the election.
3. That he has not been a naturalized citizen of the United States for ninety days prior to the election.
4. That he has not resided within the county for ninety days preceding the election.
5. That he has not resided within the precinct for thirty days next preceding the election.
6. That he has before voted that day.
7. That he has been convicted of an infamous crime.
8. That he has been convicted of the embezzlement or misappropriation of public money. [In effect April 16, 1880.]

Section conforms—to requirements of § 1083, as amd. 1880.

List of Challenges—to be kept, § 1243.

SUBDIVISION 1. Identity—see § 1231, 1236, subd. 1, 1237.

SUBDIVISION 2. One year's residence in State—see §§ 1232, 1237. Residence for voting purposes, rules for determing place of, § 1239.

SUBDIVISION 3. Naturalization for ninety days—see § 1083 and notes; also see § 1237.

SUBDIVISION 4. Ninety days' residence in county—see §§ 1083, 1233, 1237, 1239.

SUBDIVISION 5. Thirty days' residence in precinct—see note to subd. 4.

SUBDIVISION 6. Previous voting—see §§ 1234, 1236, subd. 2.

SUBDIVISION 7. Conviction for infamous crime—see §§ 1084, 1235, 1237.

SUBDIVISION 8. Conviction for embezzlement, etc.—see §§ 1084, 1235, 1237.

1231. If the challenge is on the ground that he is not the person whose name appears on the Great Register, the Inspector must tender him the following oath:

"You do swear [or affirm] that you are the person whose name is entered on the Great Register."

Taking the oath tendered—determines challenge in favor of party challenged, § 1236, subd. 1. Necessity of, § 1237. Refusal bars vote, § 1238.

1232. *If the* challenge is on the ground that he has not *resided in the State* for one year next preceding the election,

the person challenged must be sworn to answer questions, and after he is sworn the following questions must be propounded to him by the Inspector:

1. Have you resided in this State for one year immediately preceding this election?

2. Have you been absent from this State within one year immediately preceding this election? If yes, then,

3. When you left did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?

4. Did you, while absent, regard this State as your home?

5. Did you, while absent, vote in any other State?

And such other questions as may be necessary to a determination of the challenge. [In effect April 16, 1880.]

Before administering oath—rules may be read, § 1241.

Refusal to be sworn or to answer questions—is misdemeanor, Penal Code, § 43; and bars vote, § 1238 of this Code.

Place of residence—of elector, rules for determining, § 1239.

Challenge tried and determined—by Board of Election at time of challenge, § 1237; proceedings after, § 1242.

1233. If the challenge is on the ground that he has not resided in the county for ninety days, or precinct for thirty days next preceding the election, the person challenged must be sworn to answer questions, and after he is sworn, the following questions must be propounded to him by the Inspector:

1. When did you last come into this county or election precinct?

2. When you came into this county or precinct, did you come for a temporary purpose, merely, or for the purpose of making it your home?

3. Did you come into this county or precinct for the purpose of voting here?

And such other questions as may be necessary to a determination of the challenge. [In effect April 16, 1880.]

Refusal to be sworn, etc.—place of residence, rules before oath, determination of challenge, § 1232a.

Statements of voter—as to his qualifications, doubtful if evidence in contested election case, 30 Cal. 398.

1234. If the challenge is on the ground that the person challenged has before voted that day, the Inspector must tender to the person challenged this oath:

"You do swear [or affirm] that you have not before voted this day."

Taking the oath tendered—defeats challenge, § 1236, subd. 2. Refusal bars vote, § 1238.

Voting twice—or oftener is felony, Penal Code, § 45; attempt is misdemeanor, Penal Code, § 46; intention must accompany the act, 29 Cal. 681. Only one vote to be counted where two thus cast, 28 Cal. 134.

1235. If the challenge is on the ground that the person challenged has been convicted of an infamous crime, or that he has been convicted of the embezzlement or misappropriation of public money, he must not be questioned, but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses. [In effect April 16, 1880.]

1236. Challenges upon the grounds either:

1. That the person challenged is not the person whose name appears on the Great Register;

2. That the party has before voted on that day, are determined in favor of the party challenged by his taking the oath tendered.

When oath administered—right to vote (after challenge under subd, 2) is concluded, 5 Cal. 235.

1237. If the challenge is on the ground that the person challenged is not the person whose name appears on the Great Register, he must take the oath tendered by the Board. Challenges for causes other than those specified in the preceding section must be tried and determined by the Board of Election at the time of the challenge. [In effect April 16, 1880.]

1238. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote.

Refusal to be sworn or to answer questions—is misdemeanor, Penal Code, § 43.

1239. The Board of Election, in determining the place of residence of any person, must be governed by the following rules, as far as they are applicable:

1. That place must be considered and held to be the residence of a person, in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost residence by reason of his presence or absence from a place while employed in the service of the United States, or of this State, nor while engaged in navigation, nor while a student at any institution of learning, nor while kept in an almshouse, asylum, or prison.

3. A person must not be held, by reason of having moved from one precinct to another, in the same county, within thirty days prior to the election, to have lost his residence in the precinct so moved from, provided he was an elector therein on the thirtieth day prior to such election.

4. A person must not be considered to have lost his residence who leaves his home to go into another State, or precinct in this State, for temporary purposes merely, with the intention of returning.

5. A person must not be considered to have gained a residence in any precinct into which he comes for temporary purposes merely, without the intention of making such precinct his home.

6. If a person removes to another State with the intention of making it his residence, he loses his residence in this State.

7. If a person remove to another State with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this State, notwithstanding he entertains an intention of returning at some future period.

8. The place where a man's family resides must be held to be his residence; but if it be a place of temporary establishment for his family, or for transient objects, it is otherwise.

9. If a man have a family fixed in one place, and he does business in another, the former must be considered his place of residence; but any man having a family, and who has taken up his abode with the intention of remaining, and whose family does not so reside with him, must be regarded as a resident where he has so taken up his abode.

10. The mere intention to acquire a new residence, without the fact of removal, avails nothing; neither does the fact of removal, without the intention. [Approved March 30; in effect July 6, 1874.]

Questions as to residence—§§ 1232, 1233.

Compare with this section—rules for determining place of residence generally, § 52 and notes.

Term of residence—how computed, § 1240.

SUBDIVISION 2. **Constitutional basis**—see Const. Cal., art. 2, § 4.

Employment in service of United States—soldiers' residence not affected by, 15 Cal. 49; 28 Cal. 124; 38 Cal. 92; and attempt to confer residence thereby is unconstitutional, 26 Cal. 161; 31 Cal. 261.

SUBDIVISION 9. **Residence of family**—though party working in another county, settles place of residence, 28 Cal. 124.

SUBDIVISION 10. **Without intention**—to remain, mere inhabitancy for short period would not make elector's residence, 4 Cal. 175.

1240. The term of residence must be computed by including the day on which the person's residence commenced, and by excluding the day of the election.

Excluding day of election—proper, 28 Cal. 124.

1241. Before administering an oath to a person touching his place of residence, the Inspector must, if requested by any

person, read to the person challenged the rules prescribed by Sections 1238 and 1239.

Oath touching place of residence—§§ 1232, 1233.

1242. If the challenge is determined against the person offering to vote, the ballot offered must, without examination, be returned to him; if determined in his favor, the ballot must be deposited in the ballot-box.

1243. The Board must cause one of the Clerks to keep a list, showing:

1. The names of all persons challenged;
2. The grounds of such challenges;
3. The determination of the Board upon the challenge.

CHAPTER X.

Canvassing and Returning the Vote.

§ 1252. Canvass to be public and without adjournment.
§ 1253. Canvass, how commenced.
§ 1254. Ballots must be made to agree with names on the list.
§ 1255. Same.
§ 1256. Same.
§ 1257. Counting the votes.
§ 1258. Tallies.
§ 1259. Tickets to be strung and inclosed in sealed envelops.
§ 1260. Return list.
§ 1261. Certain papers to be sealed up.
§ 1262. Inspector to keep certain papers.
§ 1263. Returns and ballots to be delivered to a member of the Board.
§ 1264. Must be delivered to County Clerk.
§ 1265. Clerk to keep ballots unopened.
§ 1266. When package containing ballots may be destroyed; when opened.
§ 1267. Returns to be delivered by Clerk to Supervisors.
§ 1268. Copy of Register to be filed in County Clerk's office.

1252. As soon as the polls are finally closed the Judges must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof is declared.

1253. The canvass must be commenced by taking out of the box the ballots unopened (except so far as to ascertain whether each ballot is single), and counting the same to ascertain whether the number of ballots corresponds with the number of names on the list of voters kept by the clerks. In the City and County of San Francisco, at the closing of the polls, the Inspector must administer to the additional members of the Board of Canvassers the oath prescribed in section one thousand one hundred and forty-eight, and likewise to two clerks appointed by such additional members. He must then proceed to take out of the box the ballots, unopened, one at a time, numbering them on the backs in numerical order, commencing with number one, and writing with ink the initials of his own name upon the back of each ballot as taken out. He shall pass each ballot, as soon as thus indorsed, to the additional Inspector, who must, in like manner, write thereon the initials of his own name, so that each ballot can be subsequently identified by either or both such Inspectors. [Approved March 30; in effect July 6, 1874.]

List of voters—§ 1229.

1254. If two or more separate ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; then, if upon comparison of the count with the number of names of electors on the lists which have been kept by the clerks, it appears that the two ballots thus folded together were cast by one elector, they must be rejected. [Approved March 30; in effect July 6, 1874.]

1255. The ballots must be immediately replaced in the box, and if the ballots in the box exceed in number the names on the lists, one of the Judges must publicly, and without looking in the box, draw out therefrom singly, and destoy, unopened, a number of ballots equal to such excess; and the Board of Election must make a record, upon the poll list, of the number of ballots so drawn and destroyed. In the City and County of San Francisco the numbers appearing on the backs of the ballots so drawn must likewise be recorded. [Approved March 30; in effect July 6, 1874.]

1256. The number of ballots agreeing or being thus made to agree with the number of names on the lists, the lists must be signed by the members of the Board and attested by the Clerks, and the number of names thereon must be set down in words and figures at the foot of each list, and over the signatures of the Judges and the attestation of the Clerks, substantially in the form prescribed in Section 1174.

1257. After the lists are thus signed, the Board must proceed to count and ascertain the number of votes cast for each person voted for. The ballots must be taken out and opened by one of the members of the Board, and the ticket must be distinctly read.

1258. Each Clerk must write down each office to be filled, and the name of each person voted for to fill such office, and keep the number of votes by tallies as they are read aloud.

1259. The tickets as soon as read, or rejected for illegality, must be strung upon a string by one of the Judges, and must not thereafter be examined by any person, but must, as soon as all are counted, be carefully sealed in a strong envelop, each member of the Board writing his name across the seal.

Preservation of the ballots—object of provisions for. 28 Cal. 132.

Ballots as evidence—held better evidence of votes cast (under similar statute) than tally lists, 28 Cal. 133; but regarded otherwise where fraudulently tampered with, 45 Cal. 241.

1260. As soon as all the votes are counted and the tickets sealed up, lists must be attached to the tally lists containing

the names of persons voted for and for what office, and the number of votes given for each candidate, the number being written at full length, and such lists must be signed by the members of the Board and attested by the Clerks, substantially in the form in Section 1174 given.

1261. The Board must, before it adjourns, inclose in a cover, and seal up and direct to the County Clerk, the copy of the register upon which one of the Judges marked the word "Voted" as the ballots were received, all certificates of registration received by it, one of the lists of the persons challenged, one copy of the list of voters, and one of the tally lists and list attached thereto. [Approved March 30; in effect July 6, 1874.]

1262. The Inspector must retain, open to the inspection of all electors, for at least six months, the other list of voters, tally list, and list attached thereto. [Approved March 30; in effect July 6, 1874.]

1263. The sealed packages containing the register, lists, papers, and ballots, must, before the Board adjourns, be delivered to one of its number, to be determined by lot, unless otherwise agreed upon.

1264. The member to whom such packages are delivered must, without delay, deliver such packages without their having been opened, to the County Clerk, nearest Postmaster, or sworn express agent, who shall indorse on such packages the name of the party delivering them, and date of such delivery. If delivered to a Postmaster or express agent, such Postmaster or express agent shall forward the packages by the first mail or express to the county seat. In the City and County of San Francisco, such packages must be delivered to the County Clerk within eighteen hours from the time of adjournment of the Board, which time of adjournment must be indorsed upon such package, and upon each poll list, in ink, and signed by a majority of the members of such Board. In the City and County of San Francisco, the packages must be put up and sealed in the following manner, by an Inspector, and at least three others of the Board, and be signed with their respective signatures, across the same, written: One package to contain the ballots only; one package to contain one tally list and list attached, only; one package to contain the Ward Register and certificates of registration issued by the County Clerk after making up the Ward Register, and received at the polls. [Approved March 30; in effect July 6, 1874.]

1265. Upon the receipt of the packages the Clerk must file the one containing ballots, and must keep it unopened and

unaltered for twelve months, after which time, if there is not a contest commenced in some tribunal having jurisdiction about such election, he must burn the package, without opening or examining its contents.

Contesting elections—Code Civ. Proc., §§ 1111-1127. Usurpation of office, etc., Code Civ. Proc., §§ 802-810.

Unopened and unaltered—violation causes ballots to be overcome by returns of officers, 45 Cal. 241.

1266. If within twelve months there is such a contest commenced, he must keep the package unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy it, unless such package is, by virtue of an order of the tribunal in which the contest is pending, brought and opened before it, to the end that evidence may be had of its contents, in which event the package and contents are in the custody of such tribunal.

Contesting elections—§ 1266a.

1267. The other package the Clerk must produce before the Board of Supervisors, when it is in session for the purpose of canvassing returns.

Canvass of returns—meeting of Supervisors for, §§ 1278-1280.

1268. As soon as the returns are canvassed the Clerk must take the copy of the register returned and file it in his office.

Canvass of returns—§ 1267a.

CHAPTER XI.

Canvass of Returns—Declaration of Result—Commissions and Certificates of Election.

§ 1278. Meeting of Supervisors to canvass returns.
§ 1279. Same.
§ 1280. Same.
§ 1281. Canvass, how made.
§ 1282. Statement of result to be entered of record.
§ 1283. Declaration of result.
§ 1284. Certificates issued by Clerk.
§ 1285. District returns, how made up.
§ 1286. How transmitted.
§ 1287. Duty of Clerk receiving district returns.
§ 1288. State returns, how made.
§ 1289. How transmitted.
§ 1290. Duty of Secretary of State relative to.
§ 1291. Commissions issued by Governor.
§ 1292. Returns of election for Governor and Lieutenant-Governor, how made.
§ 1293. How transmitted.
§ 1294. Same.
§ 1295. Same.
§ 1296. Canvass of returns of election for Governor and Lieutenant-Governor.
§ 1297. Defects in form of returns, when to be disregarded.

1278. The Board of Supervisors of each county, except Humboldt, San Diego, and Trinity, must meet at their usual place of meeting, on the first Monday after each election, to canvass the returns.

Section cited—52 Cal. 9.

1279. The Board of Supervisors of the counties excepted must each meet at its usual place of meeting, on the second Monday after each election, to canvass the returns.

1280. If at the time of meeting, the returns from each precinct in the county in which polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all of the returns are received, or until six postponements have been had.

Section cited—52 Cal. 9.

1281. The canvass must be made in public, and by opening the returns *and estimating* the vote of such county or

township for each person voted for, and for and against each proposition voted upon at such election, and declaring the result thereof.

Section cited—52 Cal. 4, 9.

Returns are prima facie evidence—of facts they import, 12 Cal. 352; ballots as evidence, § 1259*n*; not be rejected for irregularity in appointment of election officers which does not affect result, 34 Cal. 640.

Result declared—not conclusive, 30 Cal. 337.

1282. The Clerk of the Board must, as soon as the result is declared, enter on the records of such Board a statement of such result, which statement must show:

1. The whole number of votes cast in the county;
2. The names of the persons voted for, and the propositions voted upon;
3. The office to fill which each person was voted for;
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions;
5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

Section cited—52 Cal. 9.

Statement entered of record—must be authenticated to form basis of abstract required by § 1288, 52 Cal. 6.

Record—required to secure permanency, 52 Cal. 5.

1283. The Board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or subdivision thereof.

Irregularities—unless material and affecting result, do not invalidate election, 12 Cal. 352; 31 Cal. 173; 34 Cal. 640; as failure of an officer to perform a merely ministerial act, 2 Cal. 137; or defect or informality in return, § 1297; or the mere receiving and counting votes improperly given, 12 Cal. 352; or fact that ballot-box temporarily out of possession of election officers, 12 Cal. 352; or reading of ballots by outsider, 31 Cal. 173; or irregularity in appointment of election officers, 31 Cal. 173; 34 640.

Highest number of votes—if one receiving ineligible, next highest not elected, 52 Cal. 41.

1284. The County Clerk must immediately make out and deliver to such person (except to the person elected Superior Judge) a certificate of election signed by him, and authenticated with the seal of the Superior Court. [In effect April 16, 1880.]

Certificate of election—is prima facie, 20 Cal. 50, but neither conclusive nor sole evidence of election, 10 Cal. 376; if lost or destroyed, contents may be proved by secondary evidence, 5 Cal. 389. Separate, not required for ex officio office, 34 Cal. 470.

1285. When there are officers, other than Representatives in Congress, members of the State Board of Equalization, and *Railroad Commissioners* voted for, who are chosen by the

electors of a district composed of two or more counties, each of the County Clerks of the counties composing such district, immediately after making out the statement specified in section twelve hundred and eighty-two, must make a certified abstract of so much thereof as relates to the election of such officers. [In effect April 16, 1880.]

Amendment 1880—excepted members Board Equalization and Railroad Commissioners; see corresponding insertion in § 1288.

1286. The Clerk must seal up such abstract, indorse it "Election Returns," and, without delay, transmit the same by mail to the County Clerk of the county which stands first in alphabetical arrangement in the list of counties composing such district.

1287. The Clerk to whom the election returns of a district are made, must, on the twentieth day after such election, or sooner, if returns from all the counties in the district have been received, open in public such returns, and from them and the statement of the vote for such officers in his own county:

1. Make a statement of the vote of the district for such officers, and file the same, together with the returns, in his office;

2. Transmit a certified copy of such statement to the Secretary of State;

3. Make out and deliver, or transmit by mail, to the persons elected a certificate of election (unless it is by law otherwise provided).

1288. When there has been a general or special election for officers chosen by the electors of the State at large, or for judicial officers (except Justices of the Peace), or for members of the State Board of Equalization, or for Railroad Commissioners, each County Clerk, so soon as the statement of the vote of his county is made out and entered upon the records of the Board of Supervisors, must make a certified abstract of so much thereof as relates to the votes given for persons for said offices to be filled at such election. [In effect April 16, 1880.]

Election for members State Board of Equalization and Railroad Commissioners—included by amdt. 1880, pursuant to Const, Cal. 1879, art. 13, § 9, and art. 12, § 22.

Abstract—means certified copy of statement entered of record (see § 1282) and authenticated by signatures of Chairman and Clerk of Board of Supervisors (see § 4020), 52 Cal. 6.

1289. The Clerk must seal up such abstract, indorse it "Election Returns," and *without* delay transmit it by mail to the *Secretary of State.*

Abstract—transmitted to Secretary of State, nature of, § 1288*n*.

1290. On the fortieth day after the day of election, or so soon as the returns have been received from all the counties of the State, if received within that time, the Secretary of State must compare and estimate the vote, and make out and file in his office a statement thereof, and transmit a copy of such statement to the Governor. [In effect April 16, 1880.]

Amendment 1880—changed sixtieth day to fortieth.

1291. Upon receipt of such copy, the Governor must issue commissions to the persons who from it appear to have received the highest number of votes for offices, except that of Governor or Lieutenant-Governor, to be filled at such election.

Except that of Governor and Lieutenant-Governor—see § 1292 *et seq.*

1292. When an election has been held to fill the office of Governor or Lieutenant-Governor, the Clerk of each county, in addition to the abstract made for transmission to the Secretary of State, must, as soon as the statement of the vote of his county is made out and entered upon the records of the Board of Supervisors, make two certified abstracts of so much thereof as relates to the vote given for such officers.

Election for Governor and Lieutenant-Governor—Const. Cal., art. 5, §§ 2, 15.

1293. The Clerk must seal up each abstract separately, and indorse thereon "Election Returns for Governor and Lieutenant-Governor."

Returns to be sealed—Const. Cal., art. 5, § 4.

1294. He must at once direct one copy to "The Speaker of the Assembly next to meet," address it to Sacramento, California, and deposit it, post paid, in the Post Office.

Returns to be directed—to Speaker of Assembly, Const. Cal., art. 5, § 4.

1295. The other copy he must direct and address in the same manner, and at once deliver it to a member elect of the Legislature, or to a Senator who holds over; and the person to whom it is so delivered must deliver it to the Speaker on or before the second day next after his election.

1296. The returns of election for Governor and Lieutenant-Governor must, during the first week of the session, be opened, canvassed, and the result declared by the Speaker of the Assembly in presence of both Houses.

Returns to be opened—and published in presence of both Houses of Legislature, Const. Cal., art. 5, § 4.

1297. No declaration of the result, commission, or certificate must be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended and who is elected thereto.

Immaterial irregularities—not affecting result, do not invalidate election, § 1283a.

CHAPTER XII.

Election for Electors of President and Vice President.

§ 1307. Electors, when chosen.
§ 1308. Returnes, how made.
§ 1309. How transmitted.
§ 1310. Messenger, when Clerk may employ.
§ 1311. Proof of necessity for and approval of appointment of messenger.
§ 1312. Compensation of messenger.
§ 1313. Duties of Secretary of State relative to returns.
§ 1314. Duty of Governor.
§ 1315. Meeting of Electors.
§ 1316. Vacancies in, how supplied.
§ 1317. Voting by Electors, and returns.
§ 1318. Separate ballots for President and Vice President.
§ 1319. Must make lists of persons voted for.
§ 1320. Result to be transmitted to the President of the United States Senate.
§ 1321. Compensation of Electors.
§ 1322. How audited and paid.

1307. At the general election in each bissextile or leap year, unless by the laws of the United States another time is fixed, and then at such time there must be chosen by the qualified voters of the State, as many Electors of President and Vice-President of the United States as the State is then entitled to.

Choosing Presidential Electors—Const. U. S., art. 2, § 1.

1308. The Clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the Board of Supervisors, must make a certified abstract of so much thereof as relates to the vote given for persons for Electors of President and Vice-President of the United States.

1309. The Clerk must seal up such abstract, indorse it "Presidential Election Returns," and without delay transmit it to the Secretary of State by mail or in the manner hereinafter prescribed.

1310. If the County Clerk of any county has reason to believe that the abstract will not, in the due course of mail, reach the Secretary of State before the time fixed by law for *canvassing the returns* of such election, he may, with the ap-

proval of the Superior Judge, employ a person to convey and deliver such abstract to the Secretary of State. [In effect April 16, 1880.]

Superior Judge—substituted for County Judge by amdt. 1880.

1311. In the event provided for in the preceding section, the Clerk must make an affidavit, setting forth the reasons for his belief, and the name of the person employed by him, which affidavit, with the approval of the Superior Judge indorsed thereon, must be given to the person appointed, and by him, with the abstract, must be delivered to the Secretary of State. [In effect April 16, 1880.]

Change by amendment 1880—see § 1310*n*.

1312. The person appointed by the Clerk, after he delivers the abstract and statement, is entitled to receive as compensation mileage at the rate of thirty cents a mile from the county seat to the seat of government. His account therefor, certified by the Secretary of State, must be audited by the Controller and paid out of the General Fund in the State Treasury.

1313. On the last Monday in the month of the election, or as soon as the returns have been received from all the counties in the State, if received before that time, the Secretary of State must compare and estimate the votes given for Electors, and certify to the Governor the names of the proper number of persons having the highest number of votes.

1314. The Governor must, upon the receipt of such certificate, transmit to each of such persons a certificate of election, and on or before the day of their meeting deliver to the Electors a list of the names of Electors, and must do all other things required of him in the premises by any Act of Congress in force at the time.

1315. The Electors chosen must assemble at the seat of Government on the first Wednesday in December next after their election, at two o'clock in the afternoon.

1316. In case of the death or absence of any Elector chosen, or in case the number of Electors from any cause be deficient, the Electors then present must elect, from the citizens of the State, so many persons as will supply such deficiency.

1317. The Electors, when convened, must vote by ballot for *one person for President* and one person for Vice Presi-

dent of the United States, one of whom, at least, is not an inhabitant of this State.

Casting electoral vote—art. 12 of amdts. to Const. U. S.

1318. They must name in their ballots the persons voted for as President, and in distinct ballots the persons voted for as Vice President.

See—§ 1317a.

1319. They must make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes given for each.

See—§ 1317a.

1320. They must certify, seal up, and transmit by mail such lists to the seat of Government of the United States, directed to the President of the Senate.

See—§ 1317a.

1321. Electors receive the same pay and mileage as is allowed to members of the Assembly.

Pay and mileage allowed—to members of Assembly, see § 266.

1322. Their accounts therefor, certified by the Secretary of State, must be audited by the Controller, who must draw his warrants for the same on the Treasurer, payable out of the General Fund.

CHAPTER XIII.

Elections for Members of Congress.

ARTICLE I. ELECTION FOR SENATORS.
II. ELECTION FOR REPRESENTATIVES.

ARTICLE I.

ELECTION FOR SENATORS.

§ 1332. Elections for full terms.
§ 1333. Elections to fill vacancies.

1332. Elections for Senators in Congress for full terms must be held at the regular session of the Legislature next preceding the commencement of the term to be filled.

Elections for Senators and Representatives—by whom prescribed, Const. U. S., art. 1, § 4.

1333. Elections to fill a vacancy in the term of a United States Senator must be held at the session of the Legislature next succeeding the occurrence of such vacancy.

Vacancy—during recess of Legislature temporarily filled by Executive of State, Const. Cal., art. 1, § 3.

ARTICLE II.

ELECTIONS FOR REPRESENTATIVES.

§ 1343. When held.
§ 1344. Returns, how made.
§ 1345. How transmitted.
§ 1346. Duty of Secretary of State relative to.
§ 1347. Certificates issued by Governor.

1343. At the general election to be held in the year eighteen hundred and eighty, and at the general election every two years thereafter, there must be elected, for each Congressional District, one Representative to the Congress of the United States. [In effect April 16, 1880.]

1344. The Clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the Board of Supervisors, must make

a certified abstract of so much thereof as relates to the vote given for persons for Representatives to Congress.

Section cited—52 Cal. 9.

Abstract—meaning of, see § 1288*a*.

1345. The Clerk must seal up such abstract, indorse it "Congressional Election Returns," and without delay transmit it by mail to the Secretary of State.

Section cited—52 Cal. 10.

Abstract—§ 1344*a*.

1346. On the sixtieth day after the day of election, or as soon as the returns have been received from all the counties of the State, if received within that time, the Secretary of State must compare and estimate the votes given for such Representatives, and certify to the Governor the person having the highest number of votes in each Congressional District as duly elected.

Section Cited—52 Cal. 7, 10.

Abstract—§ 1344*a*.

1347. The Governor must, upon the receipt of such certificate, transmit to each of such persons a certificate of his election, sealed with the Great Seal and attested by the Secretary of State.

CHAPTER XIV.

Primary Elections.

§ 1357. Committees may by resolution elect to hold under election laws.
§ 1358. Resolution, form of.
§ 1359. Notice, form of.
§ 1360. Challenges.
§ 1361. None but qualified persons to participate.
§ 1362. Returns, how made.
§ 1363. Certificates of election, when issued by Board of Judges.
§ 1364. Canvass of returns and certificate by committee.
§ 1365. What provisions of law applicable to these elections.

1357. Any committee or body authorized by the rules or customs of a voluntary political association or organization, to call elections of or for such association or organization, for any purpose, may by resolution adopted at the time of making the call, elect to have such elections conducted in accordance with the rules prescribed in sections ten hundred and eighty-three, ten hundred and eighty-four, eleven hundred and forty-four, eleven hundred and forty-five, eleven hundred and forty-six, eleven hundred and forty-seven, eleven hundred and forty-eight, eleven hundred and sixty-two, eleven hundred and sixty-three, eleven hundred and sixty-four, eleven hundred and seventy-four, eleven hundred and seventy-five, eleven hundred and ninety-two, eleven hundred and ninety-three, eleven hundred and ninety-four, eleven hundred and ninety-five, eleven hundred and ninety-six, eleven hundred and ninety-nine, twelve hundred, twelve hundred and one, twelve hundred and two, twelve hundred and three, twelve hundred and twenty-four, twelve hundred and twenty-seven, twelve hundred and twenty-nine, twelve hundred and thirty, twelve hundred and thirty-one, twelve hundred and thirty-two, twelve hundred and thirty-three, twelve hundred and thirty-four, twelve hundred and thirty-five, twelve hundred and thirty-six, twelve hundred and thirty-seven, twelve hundred and thirty-eight, twelve hundred and thirty-nine, twelve hundred and forty, twelve hundred and forty-one, twelve hundred and forty-two, twelve hundred and fifty-two, twelve hundred and fifty-three, twelve hundred and fifty-four, twelve hundred and fifty-five, twelve hundred and fifty-six, twelve hundred and fifty-seven, twelve hundred and fifty-eight, twelve hundred and fifty-nine, and twelve hundred and sixty. [Approved March 26; in effect first Monday of July, *1874.*]

Before amendment 1874—no reference to §§ 1192-1196, or to § 1199.

"Piece clubs"—Act to prohibit and to prevent extortion from candidates for office, Stats. 1878, p. 236.

1358. The resolution must declare:

1. The time and place of holding the election and the hours between which the polls are to be kept open.
2. The names of the persons to constitute the Election Board.
3. The object of the election.
4. That such election will be held under the provisions of the primary election law.
5. The time and manner of the publication of notice of such election.
6. The qualifications required for voters in addition to those prescribed by law.

1359. The notice of the election must be signed by the Secretary of the committee or body, and must contain a copy of the resolution, and must be published as directed in the resolution.

1360. In addition to the challenges allowed by law, any person offering to vote at such election may be challenged upon the grounds that he does not possess the other qualifications prescribed in the resolution, and such challenges must be tried and determined by the Board of Election, who to that end may administer an oath to such persons, and may ask them any question tending to prove or disprove the challenge.

1361. None but persons who possess the qualifications prescribed by law and by the resolution must vote or participate in any of the proceedings at such election.

1362. After counting the votes and signing the lists the Judges must cause the ballots and one copy of the lists to be delivered to the Secretary signing the notice of election, and one of the Judges must retain the other lists for twenty days after the election.

1363. The Board of Election must issue certificates of election to all persons who are chosen to fill any position by the vote of one precinct alone.

1364. The committee or body from which emanated the resolution calling the election may, under such rules as it adopts, open and canvass the returns and issue certificates to persons chosen to fill positions by the voters of more than one precinct.

1365. All of the provisions of Title IV., Part I of THE PENAL CODE, and all the provisions of the sections referred to in the first section of this Chapter, are applicable to elections held under the provisions of this Chapter from and after the last publication of the notice mentioned in Section 1359.

Crimes against the elective franchise--Penal Code, §§ 41-62.

TITLE III.

Education.

CHAPTER I. UNIVERSITY OF CALIFORNIA.
II. STATE NORMAL SCHOOL.
III. PUBLIC SCHOOLS.

CHAPTER I.

University of California.

ARTICLE I. GENERAL PROVISIONS RELATING TO THE UNIVERSITY.
II. ENDOWMENT OF THE UNIVERSITY.
III. REGENTS OF THE UNIVERSITY.
IV. SECRETARY OF THE BOARD OF REGENTS.
V. ACADEMIC SENATE OF THE UNIVERSITY.
VI. UNIVERSITY CADETS.

ARTICLE I.

GENERAL PROVISIONS RELATING TO THE UNIVERSITY.

§ 1385. Object of University.
§ 1386. Colleges to be maintained.
§ 1387. Scope of College of Letters.
§ 1388. Course of instruction.
§ 1389. President of University.
§ 1390. Duties of President.
§ 1391. Government and discipline.
§ 1392. Students.
§ 1393. Fees and rates of tuition.
§ 1394. Same.
§ 1395. Free scholarship.
§ 1396. Colleges may be affiliated with University.
§ 1397. Annual examination for degrees.
§ 1398. Same.
§ 1399. Same.
§ 1400. Degrees to graduates of affiliated colleges.
§ 1401. Certificates of proficiency.
§ 1402. Degrees.
§ 1403. Degrees in Colleges of Letters.
§ 1404. System of manual labor in connection with Agricultural College.
§ 1405. Sectarian, etc., tests prohibited.

1385. The University of California, located in Alameda County, has for its object general instruction and education in all the departments of science, literature, art, industrial and professional pursuits, and special instruction for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine, and commerce.

University of California—declared a public trust, Const. Cal. 1879, art. 9, § 9.

University funds—creation, management and application of, Const. Cal. 1879, art. 9, § 9. Annual appropriation to reimburse University for withheld moneys of Endowment Fund, Stats. 1881, p. 51.

Organic Act—creating University, Stats. 1868, p. 248.

1386. There must be maintained in the University:

1. A College of Letters.
2. A College or Colleges of Science, including Agriculture, Mechanics, Mining, Engineering, Chemistry, and such other specialities as the Board of Regents may determine.
3. College of Medicine and Law.
4. Such other colleges as the Board of Regents may establish. [Approved March 30; in effect July 6, 1874.]

SUBDIVISION 3. **Colleges of medicine and law**—affiliation of, § 1396.

1387. The College of Letters must embrace a liberal course of instruction in language, literature and philosophy.

1388. Each full course of instruction consists of its appropriate studies and courses, to be determined by the Board of Regents. [Approved March 30; in effect July 6, 1874.]

1389. The President of the University is the executive head of the institution in all its departments, except as herein otherwise provided.

1390. He must, subject to the Board of Regents, give general direction to the practical affairs of the several colleges, and in the recess of the Board of Regents may remove any employee or subordinate officer not a member of any Faculty, and supply for the time being any vacancies thus created; and until the Regents otherwise direct he is charged with the duties of one of the professorships.

1391. The immediate government of the several colleges is intrusted to their respective Faculties, each of which must have its own oaganization, regulate its own affairs, and may recommend the course of study and the text-books to be used.

1392. Any resident of California of the age of fourteen years or upwards, of approved moral character, may enter himself in the University as a student at large, and receive tuition in any branches of instruction at the time when the same are given in their regular course, on such terms as the Board of Regents may prescribe.

Any resident of California—construction in favor of female law students, 54 Cal. 35; no person to be debarred admission on account of sex, Const. Cal. 1879, art. 9, § 9.

1393. An admission fee and rate of tuition fixed by the Board of Regents must be required of each pupil, except as herein otherwise provided.

1394. As soon as the income of the University shall permit, admission and tuition must be free to all residents of the State; and the Regents must so apportion the representation of students according to population that all portions of the State may enjoy equal privileges therein.

1395. If approved by the Board of Regents, scholarships may be established in the University by any persons for the purpose of private benefaction or of affording tuition in any course of the University, free from the ordinary charges, to any scholar in the public schools of the State who may distinguish himself in study, according to the recommendation of his teachers, and who passes the examination required for the grade at which he wishes to enter the University.

Basis of section—Stats. 1870, p. 546.

1396. The Board of Regents may affiliate with the University any incorporated college of medicine, law, or other special course of instruction, upon such terms as may be deemed expedient; and such college may retain the control of its own property, have its own Boards of Trustees, Faculties, and Presidents, respectively; and the students of such colleges, recommended by the respective Faculties thereof, may receive from the University the degrees of those colleges.

Basis of section—Stats. 1868, p. 248, construed in 54 Cal. 31 *et seq.*

Hastings College of Law—creation of, Stats. 1878, p. 533; intention of Act creating, was that affiliated law school should be governed by laws applicable to University, 54 Cal. 28; women admitted as students, 54 Cal. 28; and see Const. Cal. 1879, art. 9, § 9.

Medical Department—of the University of California to be called the "Toland," Stats. 1881, p. 24.

1397. The examinations for degrees must be annual. Students who have passed not less than a year as residents in any college, academy, or school in this State, and who, after examination by the Faculty thereof, are recommended by them as

proficient candidates for any degree in any regular course of the University, must be examined therefor at the annual examination; and on passing such examination may receive the degree and diploma for that course, and rank as graduates.

1398. All students of the University who have been residents thereat for not less than one year, and all graduates thereof, may present themselves for examination in any course at the annual examinations, and, on passing such examination, may receive the degree and diploma of that course. [Approved March 30; in effect July 6, 1874.]

1399. Upon such examinations each professor and instructor of that course may cast one vote, by ballot, upon each application for recommendation to the Board of Regents for a degree.

1400. Graduates of the College of California, and of any incorporated college affiliated with the University, may receive the degrees from, and rank as graduates of the University.

1401. The Board of Regents may also confer certificates of proficiency in any branch of study, upon such students of the University as upon examination are found entitled to the same.

1402. The proper degree of each college must be conferred at the end of the course upon such students as, having completed the same, are found proficient therein.

1403. The degree of Bachelor of Arts, and afterwards the degree of Master of Arts, in usual course, must be conferred upon the graduates of the College of Letters.

1404. A system of moderate manual labor must be established in connection with the Agricultural College, upon its agricultural and ornamental grounds, for practical education in agriculture and landscape gardening.

Basis of section—Stats. 1868, p. 249.

1405. No sectarian, political, or partisan test must ever be allowed or exercised in the appointment of Regents, or in the election of professors, teachers, or other officers of the University, or in the admission of students thereto, or for any purpose whatsoever; nor must the majority of the Board of Regents be of any one religious sect or of no religious belief.

Basis of section—condensation of Stats. 1868, pp. 248-259; and see Stats. 1870, p. 688.

Independence of political or sectarian influence—preserved by Const. Cal. 1879, art. 9, § 9.

ARTICLE II.

ENDOWMENT OF THE UNIVERSITY.

§ 1415. Endowment.

1415. The endorsement [endowment] of the University is:

1. The proceeds of the sale of the seventy-two sections of land granted to the State for a seminary of learning.

2. The proceeds of the ten sections of land granted to the State for public buildings.

3. The income derived from the investments of the proceeds of the sale of the lands or of the scrip therefor, or of any part thereof, granted to this State for the endowment, support, and maintenance of at least one college where the leading object shall be—without excluding other scientific and classical studies, and including military tactics—to teach such branches of learning as are related to agriculture and the mechanic arts.

4. The income of the Fund set apart by "An Act for the endowment of the University of California," approved April second, eighteen hundred and seventy, which is continued in force.

6. The State of California, in its corporate capacity, may take by grant, gift, devise, or bequest, any property for the use of the University, and hold the same, and apply the funds arising therefrom, through the Regents of the University, to the support of the University, as provided in Article IX, section four, of the Constitution.

7. The Regents of the University, in their corporate capacity, may take, by grant, gift, devise, or bequest, any property for the use of the University, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, an observatory, workshops, gardens, greenhouses, apparatus, a Students' Loan Fund, or any other purpose appropriate to the University; and such property shall be taken, received, held, managed, and invested, and the proceeds thereof used, bestowed, and applied by the said Regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest.

8. The Regents of the University may invest any of the permanent funds of the University, which are now or hereafter may be in their custody, in productive, unincumbered real estate in this State, subject to the power of the Legislature to control or change such investments, excepting such as, by the terms of their acquisition, must be otherwise invested.

9. If, by the terms of any grant, gift, devise, or bequest,

such as are described in the preceding sixth and seventh subdivisions, conditions are imposed which are impracticable under the provisions of the Civil Code, such grant, gift, devise, or bequest, shall not thereby fail, but such conditions shall be rejected, and the intent of the donor carried out as near as may be. [Approved March 30; in effect July 6, 1874.]

Permanent endowment fund—consolidation of funds for, and use of income for current expenses, see Stats. 1878, p. 337.

University lands—selection and sale of, §§ 3533-3556.

SUBDIVISIONS 1, 2. Proceeds of lands for seminary of learning and public buildings—disposition of, § 3535.

SUBDIVISION 3. College of agriculture and mechanic arts—proceeds of sales of lands for, § 3533; interest inviolably appropriated for at least one, Const. Cal. 1879, art. 9, § 9.

SUBDIVISION 7. Regents to receive donations—see § 1432, subd. 5, and notes.

ARTICLE III.

REGENTS OF THE UNIVERSITY.

§ 1425. University controlled by Regents.
§ 1426. Sixteen Regents appointed by the Governor.
§ 1427. Six other Regents, appointment of.
§ 1428. Vacancies.
§ 1429. President of the Board.
§ 1430. Quorum.
§ 1431. Regents receive no compensation.
§ 1432. General powers and duties of Regents.
§ 1433. Income arising from endowment at disposition of Regents.
§ 1434. Fund to be set apart for current expenses.
§ 1435. Funds may be drawn from State Treasury.
§ 1436. Construction of buildings.
§ 1437. Same.
§ 1438. Same.
§ 1439. Temporary buildings.

1425. The University is under the control of a Board of Regents, consisting of twenty-two members; but the President of the University, for the time being, shall be a member of the Board of Regents, by virtue of his office. [Approved March 30; in effect July 6, 1874.]

Basis of section—Stats. 1878, p. 248.

Regents of University—are civil executive officers, § 343.

1426. Sixteen members of the Board are appointed by the Governor, with the advice and consent of the Senate. Their term of office is sixteen years.

1427. Six members of the Board hold by virtue of other offices, as provided in Section 353.

Ex officio Regents—§ 353.

1428. Whenever a vacancy occurs in the Board, the Governor must appoint some person to fill it, and the person so appointed holds for the remainder of the term.

1429. The Governor is President of the Board.

1430. Seven members constitute a quorum of the Board.

1431. The members receive no compensation.

1432. The powers and duties of the Board of Regents are as follows:

1. To meet at such times and places as their rules may prescribe, or at the call of the President of the Board.
2. To control and manage the University and its property.
3. To prescribe rules for their own government and for the government of the University.
4. To adopt and prescribe rules for the government and discipline of the cadets.
5. To receive, in the name of the State, or of the Board of Regents, as the case may be, all property donated to the University.
6. To choose a President of the University, the Professors, and other officers and employees of the University, prescribe their duties, fix and provide for the payment of their salaries.
7. To fix the qualifications for admission to the benefits of the University.
8. To fix the admission fee and rates of tuition.
9. To appoint a Secretary and Treasurer, prescribe their duties, and fix and provide for the payment of their compensation.
10. To remove, at pleasure, any officer, professor, or employee of the University.
11. To supervise the general courses of instruction, and, on the recommendation of the several Faculties, prescribe the authorities and text-books to be used in the several colleges.
12. To confer such degrees, and grant such diplomas, as are usual in Universities, or as they deem appropriate.
13. To establish and maintain a museum.
14. To establish and maintain a library.
15. To take immediate measures for the permanent improvement and planting of the University grounds.
16. To keep a record of all their proceedings.
17. Through the President of the University, to report to the Governor the progress, condition, and wants of each of the colleges embraced in the University, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost,

and results of all important investigations and experiments, and such other information as they may deem important. [Approved March 30; in effect July 6, 1874.]

SUBDIVISION 3. Government of the University—sale of intoxicating liquors within two miles of University prohibited, Stats. 1873, p. 12.

SUBDIVISION 5. To receive donations — specimens collected by State Geological Survey, § 550 and notes.

SUBDIVISION 14. Library and Art Gallery Building—Act making appropriation for, to supplement donation of H. D. Bacon, Stats. 1878, p. 930.

SUBDIVISION 15. University grounds—planting of jute directed, Stats. 1880, p. 154 or 27. Water supply for University (and Asylum for Deaf, Dumb and Blind), Stats. 1876, p. 816: construction of Act, Berryman v. Perkins, July 23, 1880, 5 P. C. L. J. 522.

1433. The entire income arising from the endowment is subject to the trusts at the disposition of the Board of Regents for the support of the University.

Consolidated Perpetual Endowment Fund—Stats. 1878, p. 337.

Commission—to report to Legislature the condition of the University funds and grants, Stats. 1878, p. 928.

1434. For the current expenditures of the University specific sums of money must be set aside, out of the funds at their disposal, by the Board of Regents, which are subject to the warrants of the President of the Board, drawn upon the Treasurer of the University in pursuance of the orders of the Board of Regents.

Current expenses—income of Consolidated Perpetual Endowment Fund to be used for, Stats. 1878, p. 337.

1435. All moneys which may at any time be in the State Treasury, subject to the use of the Board of Regents, may be drawn therefrom by the President of the Board, upon the order of the Board, in favor of the Treasurer of the University. [Approved March 30; in effect July 6, 1874.]

1436. The Regents must cause to be constructed such buildings as are needed for the use of the University.

1437. The plan adopted in the construction of buildings must provide separate buildings for separate uses, and so group all such buildings that a central building may bring the whole in harmony as part of one design.

1438. The construction and furnishing of the buildings must be let out to the lowest responsible bidder, after advertisement for not less than ten days in at least two daily newspapers published in the city of San Francisco; but the Regents may reject any bid, and advertise anew.

1439. Until the University buildings are ready for use the Regents may make temporary arrangements for buildings at Oakland.

ARTICLE IV.

SECRETARY OF THE BOARD OF REGENTS.

§ 1449. Qualifications and choice of Secretary.
§ 1450. Residence and duties of Secretary.
§ 1451. Term and compensation.

1449. A practical agriculturist, competent to superintend the working of the agricultural farm and to discharge the duties of Secretary of the Board of Regents, must be chosen by the Board as their Secretary.

1450. The Secretary must:

1. Reside and keep his office at the seat of the University.
2. Keep a record of the transactions of the Board of Regents, which must be open at all times to the inspection of any citizen of this State.
3. Have the custody of all books, papers, documents, and other property which may be deposited in his office.
4. Keep and file all reports and communications which may be made to the University appertaining to education, science, art, husbandry, mechanics, or mining.
5. Address circulars to societies and others, soliciting information upon the latest and best modes of culture of the products adapted to the soil and climate of the State, and on all subjects connected with field culture, horticulture, stock-raising, and the dairy.
6. Correspond with established schools of mining and metallurgy in Europe, and obtain information respecting the improvements of mining machinery adapted to California.
7. Correspond with the Patent Office at Washington, and with the representatives of the Government of the United States abroad, to procure contributions to agriculture from these sources; receive and distribute seeds, plants, shrubbery, and trees adapted to our climate and soils, for the purposes of experiment.
8. Obtain contributions to the museums and the library of the University.
9. Keep a correct account of all the executive acts of the President of the University.
10. Keep an accurate account of all moneys received into the Treasury or paid therefrom.
11. Distribute the seeds, plants, trees, and shrubbery received by him, and not needed by the University, equally

throughout the State, to farmers and others who will agree to cultivate them properly and return to the Secretary's office a reasonable proportion of the products thereof, with a statement of the mode of cultivation, and such other information as may be necessary to ascertain their value for cultivation in the State.

12. Publish from time to time in the newspapers of the State, free of charge, information relating to agriculture, the mechanic arts, mining and metallurgy.

Basis of section—Stats. 1868, p. 248.

1451. The Secretary holds office at the pleasure of and receives the compensation fixed by the Board.

Basis of section—Stats. 1868, p. 248.

ARTICLE V.

ACADEMIC SENATE OF THE UNIVERSITY.

§ 1461. Academic Senate.
§ 1462. General powers of.
§ 1463. Proceedings of.

1461. The Academic Senate is composed of the Faculties and Instructors of the University.

Basis of section—Stats. 1868, p. 248.

1462. The Senate must conduct the general administration of the University, regulate the general and special courses of instruction, receive and determine all appeals from acts of discipline enforced by the Faculty of any college, and exercise such other powers as the Board of Regents may confer upon it.

1463. Its proceedings must be conducted according to rules of order adopted by it, and every person engaged in instruction in the University may participate in its discussions; but the right of voting is confined to the President and the Professors.

ARTICLE VI.

UNIVERSITY CADETS.

§ 1473. University Cadets.
§ 1474. Officers of.
§ 1475. Equipment of.
§ 1476. Retired officers of
§ 1477. Report of Military Instructor.

1473. The students of the University must be organized into a body known as the "University Cadets."

Basis of section—Stats. 1870, p. 119.

1474. The officers of cadets, between and including the ranks of Second Lieutenant and Colonel, must be selected by the chief military instructor, with the assent of the President of the University, and must be commissioned by the Governor. [Approved March 30; in effect July 6, 1874.]

1475. The Adjutant-General of the State must issue such arms, munitions, accouterments, and equipments to the University Cadets as the Board of Regents may require and the Governor approve. [Approved March 30; in effect July 6, 1874.]

1476. Upon graduating or retiring from the University, such officers may resign their commissions or hold the same as retired officers of the University Cadets, liable to be called into service by the Governor in case of war, invasion, insurrection, or rebellion.

1477. The Military Instructor must make quarterly reports to the Adjutant-General of the State, showing the number, discipline, and equipments of the cadets.

CHAPTER II.

State Normal School.

§ 1487. Object of school.
§ 1488. Under control of Board of Trustees.
§ 1489. General powers and duties of Board.
§ 1490. Regular meetings of Board.
§ 1491. Special meetings of Board.
§ 1492. Time and place of meeting of Board.
§ 1493. Apportionment of pupils. (Repealed.)
§ 1494. General qualifications for admission as pupils.
§ 1495. Pupils from State at large.
§ 1496. Pupils from other States.
§ 1497. Pupils to file certain declaration.
§ 1498. Competitive examinations before County Boards. (Repealed.)
§ 1499. Manner of examination. (Repealed.)
§ 1500. Persons passing to be admitted as pupils, in what order. (Repealed.)
§ 1501. Principal to make annual report.
§ 1502. To attend County Institutes.
§ 1503. Issuance certificates or diplomas of Normal School.
§ 1504. Secretary and Board of Trustees.
§ 1505. Supervision by Superintendent of Public Instruction.
§ 1506. Biennial appropriation to be made.
§ 1507. Orders on Controller, how drawn.

1487. The State Normal School, located at San Jose, has for its object the education of teachers for the public schools.

Original basis of chapter—before amdts. 1874, Stats. 1870, p. 788.

Normal schools—may be established as part of common school system, Const. Cal. 1879, art. 9, § 6.

Branch State Normal School—in Los Angeles, created by Stats. 1881, p. 91.

1488. It is under the management and control of a Board of Trustees, constituted as provided in Title I, of Part III, of this Code.

Board of Trustees—how constituted, § 354.

1489. The powers and duties of the Board of Trustees are as follows:

1. To prescribe rules for their own government and for the government of the school.

2. To prescribe rules for the reports of officers and teachers of the school, and for visiting other schools and institutes.

3. To prescribe the course of study, and the time and standard of graduation.

4. To prescribe the text-books, apparatus, and furniture, and provide the same, together with all stationery, for the use of the pupils.

5. To establish and maintain training or model schools, and require the pupils of the Normal School to teach and instruct classes therein.

6. To elect a Principal and other necessary teachers, fix their salaries and prescribe their duties.

7. To issue diplomas of graduation, upon the recommendation of the Faculty of the school.

8. To control and expend all moneys appropriated for the support and maintenance of the school, and all moneys received for tuition, or from donations. In no event shall any moneys appropriated for the support of the school, or received from tuition or donations, be paid or used for compensation or traveling expenses of the Trustees of the school.

9. To keep a record of their proceedings.

10. To keep open to public inspection an account of receipts and expenditures.

11. To annually report to the Governor a statement of all their transactions, and of all matters pertaining to the school.

12. To transmit with such report a copy of the principal teacher's annual report.

13. To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputably dishonest in his dealings; *provided*, that such person shall have at least thirty days previous notice of such contemplated action, and shall, if he asks it, be heard in his own defense. [In effect March 30, 1874.]

1490. The Board must hold two regular meetings in each year.

1491. It may hold special meetings, at the call of the Secretary.

1492. The time and place of regular meetings must be fixed by the by-laws. The Secretary must fix and give written notice of the time and place of special meetings.

1493. Sections one thousand four hundred and ninety-three, one thousand four hundred and ninety-eight, one thousand four hundred and ninety-nine, and one thousand five hundred of said Act are hereby repealed. [In effect March 30, 1874.]

1494. Every person admitted as a pupil to the Normal School course must be:

First—Of good moral character.

Second—Of sixteen years of age.

Third—Of that class of persons who, if of a proper age, would be admitted in the public schools of this State, without restriction. [In effect March 30, 1874.]

1495. Teachers holding State certificates of the first or second grades may be admitted from the State at large.

1496. Persons resident of another State may be admitted upon letters of recommendation from the Governor, or Superintendent of Schools thereof. [In effect March 30, 1874.]

1497. Every person making application for admission as a pupil to the Normal School, must, at the time of making such application, file with the Principal of the school a declaration that he enters the school to fit himself for teaching, and that it is his intention to engage in teaching in the public schools of this State, or in the State or Territory where the applicant resides. [In effect March 30, 1874.]

1498. Repealed. [In effect March 30, 1874. See note to § 1493.]

1499. Repealed. [In effect March 30, 1874. See note to § 1493.]

1500. Repealed. [In effect March 30, 1874. See note to § 1493.]

1501. The Principal of the school must make a detailed annual report to the Board of Trustees, with a catalogue of the pupils, and such other particulars as the Board may require or he may think useful.

Principal of the School—is member State Board of Education, § 1517.

1502. He must also attend County Institutes, and lecture before them on subjects relating to public schools and the profession of teaching.

1503. Upon the recommendation of the Faculty of the school, the Board of Trustees may issue to those who worthily complete the full course of study and training prescribed, a diploma of graduation. To the persons receiving this diploma, the State Board of Examination shall grant a first grade State certificate. In like manner, they shall issue to those who worthily complete the post graduate course, a professional diploma. To the persons receiving this diploma, the State Board of Examination shall grant an educational diploma; and they may, at their discretion, issue an elementary diploma

to those who worthily complete such part of the course of study and training as may be prescribed. To the persons receiving this diploma, the State Board of Education shall grant a second grade State certificate. [In effect March 30, 1874.]

State Board of Examination—abolished by repeal of §§ 1741-1756, and of § 1758.

State Board of Education—§§ 1517-1521.

1504. The Board of Trustees shall have power to appoint a Secretary, who shall receive no compensation. A full record of all the proceedings of the Board of Trustees shall be kept at the school, and shall be open to public inspection. [In effect March 30, 1874.]

1505. The Superintendent of Public Instruction must visit the school from time to time, inquire into its condition and management, enforce the rules and regulations made by the Board, require such reports as he deems proper from the teachers of the school, and exercise a general supervision over the same. [In effect March 30, 1874.]

Superintendent of Public Instruction—§§ 1532-1533.

1506. The sum of twenty-four thousand dollars must be appropriated biennially, out of any moneys in the General Fund not otherwise appropriated, one-half of which appropriation must be set apart at the commencement of each fiscal year to support the State Normal School. Whenever, at the close of any fiscal year, a balance remains to the credit of the State Normal School Fund, such balance must be carried forward and added to the appropriation for the succeeding year.

Appropriation Acts—for building and other purposes, Stats. 1872, p. 669; 1874, pp. 518, 603; 1876, p. 482; 1880, p. 192 or 40. For improvement of Normal School square, Stats. 1881, p. 4.

1507. All orders upon the Controller of State by the Board of Trustees must be signed by the President of the Board, and countersigned by the Secretary. Upon presentation of the order aforesaid, signed and countersigned as aforesaid, the Controller of State must draw his warrant on the State Treasurer in favor of the Board of Trustees for the moneys, or any part thereof, appropriated and set apart for the support of the Normal School, and the Treasurer must pay such warrant on presentation. [In effect March 30, 1874.]

CHAPTER III.

Public Schools.

TICLE I. STATE BOARD OF EDUCATION.
II. SUPERINTENDENT OF PUBLIC INSTRUCTION.
III. SCHOOL SUPERINTENDENTS.
IV. TEACHERS' INSTITUTES.
V. SCHOOL DISTRICTS.
VI. ELECTIONS FOR SCHOOL TRUSTEES.
VII. BOARDS OF TRUSTEES OF SCHOOL DISTRICTS AND CITY BOARDS OF EDUCATION.
VIII. DISTRICT CENSUS MARSHALS.
IX. CLERKS OF SCHOOL DISTRICTS.
X. SCHOOLS.
XI. PUPILS.
XII. TEACHERS.
XIII. DISTRICT LIBRARIES.
XIV. EDUCATIONAL JOURNAL.
XV. STATE BOARD OF EXAMINATION.
XVI. COUNTY BOARDS OF EXAMINATION.
XVII. CITY BOARDS OF EXAMINATION.
XVIII. COUNTY SCHOOL TAX.
XIX. DISTRICT SCHOOL TAX.
XX. GENERAL PROVISIONS RELATIVE TO SCHOOL FUNDS AND TAXES.
XXI. MISCELLANEOUS PROVISIONS RELATING TO PUBLIC SCHOOLS.

ARTICLE I.

STATE BOARD OF EDUCATION.

§ 1517. Board, how constituted.
§ 1518. Organization of.
§ 1519. Concurrence of a majority of all members necessary.
§ 1520. Meetings of.

§ 1521. General powers and duties of.
§ 1522. Traveling expenses of.

1517. The State Board of Education consists of the Governor, the Superintendent of Public Instruction, and the Principal of the State Normal School. [In effect April 7, 1880.]

Before amendment 1880—members of Board also included various County School Superintendents.

Education—Constitutional provisions for, Const. Cal., art. 9.

1518. The Governor is the President, and the Superintendent of Public Instruction the Secretary of the Board.

1519. A concurrence of a majority of all the members is necessary to the validity of any act of the Board.

1520. The Board meets at the call of the Secretary, and not less than twice in each year.

1521. The powers and duties of the Board are as follows:

First—To adopt rules and regulations, not inconsistent with the laws of this State, for its own government, and for the government of the public schools and district school libraries.

Second—To recommend rules for the examination of teachers.

Third—To recommend the course of study in the public schools.

Fourth—To recommend a list of books for district school libraries.

Fifth—To grant:

1. Educational diplomas, valid for six years; and,
2. Life diplomas.

Sixth—To revoke, for immoral conduct, or evident unfitness for teaching, life diplomas, educational diplomas, and State certificates heretofore issued.

Seventh—To have done by the State Printer, or other officer having the management of the State printing, any printing required by it.

Eighth—To adopt and use, in the authentication of its acts, an official seal.

Ninth—To keep a record of its proceedings.

Tenth—State educational diplomas must be issued to such persons only as have held a first grade State, city, or county, or city and county, certificate for at least one year, and shall furnish satisfactory evidence of having been successfully engaged in teaching for at least five years. Every application for an educational diploma must be accompanied by a certified copy of a resolution adopted by a local or County Board of Education, recommending that the same be granted.

Eleventh—Life diplomas must be issued upon all and the same conditions as educational diplomas, except that the applicant must furnish satisfactory evidence of having been successfully engaged in teaching for at least ten years.

Twelfth—To designate some educational monthly journal as the official organ of the Department of Public Instruction. One copy of journal so designated shall be furnished by the County Superintendent to the Clerk of each Board of District Trustees, to be by him placed in the district library. The County Superintendent of Schools shall draw his warrant semi-annually in favor of the publishers of such school journal, and charge the same to the Library Fund of the district; *provided*, that the sum so drawn shall in no case exceed one dollar and fifty cents per annum for each school district. [In effect April 7, 1880.]

Uniform series of Text-Books—former power to prescribe, abolished by amdt. 1880, pursuant to Const. Cal. 1879, art. 9, § 7, which provides for local selection, and was held self-executing in 55 Cal. 331.

1522. The actual traveling expenses of the members incurred in attending the meetings of the Board must be audited by the Controller, and paid out of the General Fund in the State Treasury.

ARTICLE II.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 1532. General duties of Superintendent.
§ 1533. Annual report of number of children.

1532. It is the duty of the Superintendent of Public Instruction:

1. To superintend the public schools in this State.

2. To report to the Governor, on or before the fifteenth of December preceding each regular session of the Legislature, a statement of the condition of the State Normal School, and other educational institutions supported by the State, and of the public schools.

3. To accompany his report with tabular statements showing the number of school children in this State; the number attending public schools, and the average attendance; the number attending private schools, and the number not attending schools; the amount of State School Fund apportioned and sources from which derived; the amount raised by county and district taxes, or from other sources of revenue, for school purposes; and the amount expended for salaries of teachers and for building school houses.

4. To apportion the State School Fund, and furnish the Controller, State Board of Examiners, and each County Treasurer and County Superintendent with an abstract of such apportionment.

5. To draw his order on the Controller in favor of each County treasurer for school moneys apportioned to the county.

6. To prepare, have printed, and furnish all officers charged with the administration of the laws relating to public schools, and to teachers, such blank forms and books as may be necessary to the discharge of their duties, including blank teacher's certificates to be used by County Boards of Education.

7. To have the law relating to public schools printed in pamphlet form, and annex thereto forms for making reports and conducting school business, the course of study, rules and regulations, a list of library books, and such suggestions on school architecture as he may deem useful.

8. To supply school officers and teachers, school libraries, and State libraries, with one copy each of the pamphlets mentioned in the preceding subdivisions.

9. To visit the several orphan asylums to which State appropriations are made, and examine into the course of instruction therein.

10. To visit the schools in the different counties, and inquire into their condition; and the actual traveling expenses thus incurred, provided they do not exceed fifteen hundred dollars per annum, shall be allowed, audited, and paid out of the General Fund in the same manner as other claims are audited and paid.

11. To authenticate with his official seal all drafts or orders drawn on him, and all papers and writings issued from his office.

12. To have bound, at an annual expense of not more than one hundred dollars, all valuable school reports, journals and documents in his office, or hereafter received by him, payable out of the State School Fund.

13. To deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office.

14. He shall have power to call biennially a convention of County Superintendents, to assemble at such time and place as he shall deem most convenient, for the discussion of questions pertaining to the supervision and administration of the public schools, the laws relating thereto, and such other subjects affecting the welfare and interests of the public schools as shall properly be brought before it. It is hereby made the duty of all County Superintendents to attend and take part in

the proceedings of such convention when it is called; and the actual traveling expenses of County Superintendents in going to and from the convention shall be allowed by the Board of Supervisors, and paid out of the same fund as the salary of the County Superintendent is paid. [In effect April 7, 1880.]

Superintendent of Public Instruction—election, salary and entrance upon office, Const. Cal. 1879, art. 9, § 2.

1533. The Superintendent of Public Instruction must report to the Controller, on or before the tenth day of August of each year, the total number of children in the State between the ages of five and seventeen years, as shown by the latest reports of the School Superintendents, on file in his office. [In effect March 13, 1874.]

ARTICLE III.

SCHOOL SUPERINTENDENTS.

§ 1542. Who is eligible. (Repealed.)
§ 1543. General duties of School Superintendents.
§ 1544. Forfeiture for failure to report.
§ 1545. May appoint teachers and open schools, when.
§ 1546. May direct repairs, etc., when.
§ 1547. Warrants drawn by him. (Repealed.)
§ 1548. Warrants, for expenses and claims.
§ 1549. May appoint deputies.
§ 1550. Compensation of Deputy in cities.
§ 1551. Report and Supervision of district boundaries.
§ 1552. Compensation and allowance of expenses.
§ 1553. Superintendent, when not to teach.

1542. Section fifteen hundred and forty-two of the Political Code is hereby repealed. [Approved February 27, and also March 30, 1874.]

1543. It is the duty of the Superintendent of Schools:

1. To superintend the schools of his county.

2. To apportion the school moneys of each school district quarterly, and for that purpose he may require of the County Auditor a report of the amount of all school moneys on hand to the credit of the several school funds of the county not already apportioned, and it is hereby made the duty of the Auditor to furnish such report when so required, and whenever, at the close of the school year, any money has accumulated to the credit of a school district, by reason of a large census roll and small attendance in excess of a reasonable amount required to maintain the schools six months in such district, the Superintendent of Schools shall apportion the same as other county school funds are apportioned. If, in any school district, there shall be an average attendance for

three months of only five pupils or less, such district shall lapse, and the moneys in the treasury of the county belonging thereto shall be apportioned by the Superintendent of Schools among the other districts of his county in proportion to the number of census children between five and seventeen, in such district.

3. On the order of the Board of Trustees, or Board of Education, to draw his requisition upon the County Auditor for all necessary expenses against the School Fund of any city, town, or district. The requisitions must be drawn in the order in which the orders therefor are filed in his office. Each requisition must specify the purpose for which it is drawn; but no requisition shall be drawn unless the money is in the fund to pay it; and no requisition shall be drawn upon the order of the Board of Trustees against the county fund of any district, except for teachers' salaries, unless such order is accompanied by an itemized bill showing the separate items, and the price of each, in payment for which the order is drawn; nor shall any requisition for teachers' salaries be drawn unless the order shall state the monthly salary of the teacher, and name the months for which such salary is due. Upon receipt of such requisition the Auditor shall draw his warrant upon the County Treasurer in favor of the parties, and for the amounst stated in such requisition.

4. To keep open, to the inspection of the public, a register of requisitions, showing the fund upon which the requisition has been drawn, the number thereof, in whose favor, and for what service drawn, and also a receipt from the person to whom the requisition was delivered.

5. To visit and examine each school in his county at least once in each year, and for every school not so visited the Board of Supervisors must, on proof thereof, deduct ten dollars from his salary.

6. To preside over Teachers' Institutes held in his county, and to secure the attendance thereat of lecturers competent to instruct in the art of teaching; and to report to the County Board of Education the names of all teachers in the county who fail to attend regularly the sessions of the Institute; to enforce the course of study, the use of text-books, and the rules and regulations for the examination of teachers prescribed by the proper authority.

7. Upon the order of the County Board of Education to issue temporary certificates, valid until the next regular meeting of the County Board of Education, to persons holding certificates of like grade granted in other counties, cities, or cities and counties, or upon any certificates or diplomas upon which County Boards are empowered to grant certificates without examination, as specified in section seventeen hundred

and seventy-five; *provided*, that no person shall be entitled to receive such temporary certificate more than once.

8. To distribute all laws, reports, circulars, instructions, and blanks which he may receive for the use of the school officers.

9. To keep in his office the reports of the Superintendent of Public Instruction.

10. To keep a record of his official acts, and of the proceedings of the County Board of Education, including a record of the standing, in each study, of all applicants examined.

11. To, except in incorporated cities and towns, pass upon and approve or reject plans for school houses.

12. To appoint trustees to fill all vacancies created by failure to elect, or otherwise, to hold until the next annual election.

13. To make reports, when directed by the Superintendent of Public Instruction, showing such matters relating to the public schools in his county as may be required of him.

14. To preserve carefully all reports of school officers and teachers, and, at the close of his official term, deliver to his successor all records, books, documents, and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the County Clerk.

15. The County Superintendent shall, unless otherwise provided by law, in the month of July in each year, grade each school; and a record thereof shall be made in a book, to be kept by the County Superintendent in his office for said purpose. And no teacher holding a certificate below the grade of said school shall be employed to teach the same. All schools shall be designated as primary and grammar. [In effect March 4, 1881.]

County School Superintendent—is officer in criminal sense, 39 Cal. 428; is civil officer in Constitutional sense, 52 Cal. 39; election of, Const. Cal. 1879, art. 9, § 3; party not ineligible to office of, 52 Cal. 39.

Distribution of school moneys—in various counties, Stats. 1876, pp. 332, 568.

1544. If he fails to make a full and correct report, as required under the provisions of subdivision thirteen of section fifteen hundred and forty-three, at the time fixed by the Superintendent of Public Instruction, he forfeits one hundred dollars of his salary; and the Board of Supervisors, upon receiving from the Superintendent of Public Instruction notice of such failure, must deduct the amount forfeited from his salary. [In effect March 4, 1881.]

Report required—by subd. 14 of § 1543, before amdt. 1880; now required by subd. 12 of same section.

1545. He must, when there is sufficient money in the fund of any school district to maintain a free school therein

for six months, if the Trustees fail to have such school kept, appoint a teacher, and open and keep such school, and may draw his requisition upon the County Auditor, who shall draw his warrant upon the fund of such district for the expense incurred. [In effect April 7, 1880.]

Six months' maintenance of free school—in year, Legislature required to provide for, by Const. Cal. 1879, art. 9, § 5.

1546. He may, in his discretion, require the Trustees of any district to repair the school buildings or property, or to abate any nuisance in or about the premises, if such repairs or abatement can be done for a sum not exceeding fifty dollars, and there is a sufficient amount of money in the Treasury to the credit of the district. He may also, in all cases, require the Trustees to provide suitable outhouses, and, where practicable, to adorn the grounds with fruit and ornamental trees and shrubbery; and if the Trustees neglect to make such provision, he may cause it to be done, and pay for it on his requisition upon the County Auditor, who shall draw his warrant payable out of any money to the credit of the district. [In effect April 7, 1880.]

1547. Sections fifteen hundred and forty-seven, sixteen hundred and eighteen, and seventeen hundred and seventy-six of the Political Code are hereby repealed. [In effect March 28, 1874.]

1548. He may draw his requisition upon the County Auditor, who shall draw his warrant on the unapportioned County School Fund in his own favor for the binding of school documents, not to exceed twenty dollars a year; for postage and expressage for his office, not to exceed one dollar for each district in his county, and for such other incidental expenses as may be authorized by law; *provided*, that not more than one-half of such allowance shall be used during the first six months of any school year, except by unanimous consent of the Board of Supervisors. [In effect April 7, 1880.]

1549. Each County Superintendent may appoint a deputy, but no salary payable out of the School Fund must be allowed such deputy. [In effect March 28, 1874.]

Powers and duties of deputies—generally, § 865.

1550. The Deputy School Superintendent of any city, or city and county, having over thirty thousand inhabitants, may receive such compensation as the Board of Education thereof prescribes, payable in the same manner and out of the same fund as the Superintendent of Schools thereof is paid. [In effect March 4, 1881.]

1551. Each School Superintendent in this State must, on or before the first day of August in each year, report to the Superintendent of Public Instruction, and to the Board of Supervisors of their respective counties, the number of children in their counties between the ages of five and seventeen years, as appears by the latest returns of the Census Marshals on file in their office. It shall be the duty of every County Superintendent to inquire and ascertain whether the boundaries of the school districts in his county are definitely and plainly described in the records of the Board of Supervisors, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall, upon the order of the Board of Supervisors, change, harmonize, and describe them, and make a report of such action to the Supervisors, and, on being ratified by the Supervisors, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The County Superintendent, if he deem it necessary for the guidance of School Census Marshals, may order the description of the district boundaries printed in pamphlet form, and pay for the same out of the County School Fund. [In effect April 7, 1880.]

1552. Each County Superintendent, except when otherwise provided by statute, shall receive such salary and his reasonable traveling expenses, to be estimated by the Board of Supervisors, and as may be allowed by the Board of Supervisors, which shall be paid out of the County General Fund, in the same manner as other salaried county officers are paid; *provided*, that such compensation shall not be less than a sum equal to twenty dollars for each school district in his county, exclusive of traveling expenses, and that he shall be allowed, in addition to his salary, a sum for postage and expressage, payable out of the County School Fund, equal to one dollar for each school district; *provided*, that in incorporated cities, each school containing three hundred pupils shall be considered equal to one school district. [In effect March 28, 1874.]

1553. No School Superintendent who receives an annual salary of fifteen hundred dollars or more must follow the profession of teaching or any other avocation that can conflict with his duties as Superintendent; but those receiving less than fifteen hundred dollars per annum may teach in the public shools of this State. [In effect March 11, 1876.]

ARTICLE IV.

TEACHERS' INSTITUTES.

§ 1560. To be held annually in certain counties.
§ 1561. When held in other counties.
§ 1562. Length of sessions.
§ 1563. Pay of teachers in attendance.
§ 1564. Expenses of Institute, how paid.
§ 1565. Teachers' Institute Fund.

1560. Whenever the number of school districts in any county is twenty or more, the County Superintendent must hold at least one Teachers' Institute in each year; and every teacher employed in a public school in the county must attend such Institute and participate in its proceedings. [In effect March 28, 1874.]

1561. In any county in which there are less than twenty school districts, the County Superintendent may, in his discretion, hold an Institute. [In effect March 28, 1874.]

1562. Each session of the Institute must continue not less than three nor more than five days.

1563. When the Institute is held during the time that teachers are employed in teaching, their pay must not be diminished by reason of their attendance.

1564. The County Superintendent must keep an accurate account of the actual expenses of said Institute, with vouchers for the same, and draw his requisition upon the County Auditor, who shall draw his warrant on the unapportioned County School Fund to pay said amount; *provided*, that such amount must not exceed one hundred dollars for any one year. [In effect April 7, 1880.]

1565. Every applicant for a teacher's certificate, upon presenting himself for examination, or for a certificate upon the life diploma or Normal School diploma of any State other than California, shall pay to the County Superintendent a fee of one dollar, to be by him immediately deposited with the County Treasurer to the credit of a fund to be known as the Teachers' Institute Fund. All funds so credited shall be drawn out only upon the requisition of the County Superintendent of Schools upon the County Auditor, who shall draw his warrant in payment for the services of such instructors in the County Teachers' Institute as shall not be residents of that county. [In effect April 7, 1880.]

ARTICLE V.

SCHOOL DISTRICTS.

§ 1575. Names of districts.
§ 1576. What forms districts.
§ 1577. Formation of new and changing boundaries of old.
§ 1578. Duties of Superintendent on receipt of petition.
§ 1579. Duties of Supervisors on same.
§ 1580. New district, when not to share in school moneys.
§ 1581. Action creating new districts void in certain events.
§ 1582. New district, when to share in school moneys.
§ 1583. Management of joint districts.

1575. Every school district must be designated by the name and style of "——— District (using the name of the district), of ——— County" (using the name of the county in which such district is situated); and in that name the Trustees may sue and be sued, and hold and convey property for the use and benefit of such district. A number must not be used as a part of the designation of any school district.

Trustees may sue in name of district—53 Cal. 32; Carpenteria School-house District v. Heath, Dec. 27, 1880, 6 P. C. L. J. 896.

1576. Each county, city, or incorporated town, unless subdivided by the legislative authority thereof, forms a school district; *provided*, the Board of Supervisors may include more territory than that now included within the boundaries of any incorporated town. [Approved March 22, 1878.]

1577. No new district can be formed unless the parents or guardians of at least fifteen census children, between the ages of five and seventeen, resident of such proposed new district, and residing at a greater distance than two miles from any school house, present a petition to the Superintendent of Schools, setting forth the boundaries of the new district asked for. The boundaries of any district cannot be changed, except in forming new districts, unless at least ten heads of families residing in the districts affected by the proposed change present a petition to the Superintendent of Schools, setting forth the change of boundaries desired, and the reasons for the same; *provided*, that two or more districts lying contiguous may, upon the petition of a majority of the heads of families residing in each of said districts, be united to constitute but one district. [In effect March 4, 1881.]

1578. After giving due notice to all parties interested, by posting notices in three public places in the district, one of which shall be at the door of the school house, for at least one week, the County Superintendent must transmit the petition to the Board of Supervisors, with his approval or disapproval.

If he approves the petition, he may note such changes in the boundaries as he may think desirable. [In effect March 28, 1874.]

1579. The Board of Supervisors must, at their first meeting after the receipt of the petition, act upon the same. If the Board establishes the district, they may do so in accordance with the original prayer of the petition, or with such modifications as they choose to make. [In effect March 28, 1874.]

1580. No new district formed by the subdivision of an old one is entitled to any share of the public moneys belonging to the old district until a school has been actually commenced in such new district.

1581. Unless within four months, after the making of an order creating a new district, school is opened therein, the order will cease to have effect.

1582. When a new district is formed by the division of an old one, the School Superintendent must, after payment of debts, divide the money to the credit of the old district at the time a school was first opened in the new district, and such as may afterwards be apportioned to the old district, according to the number of children resident in each district, for which purpose he may order a census to be taken.

1583. Whenever a district lies partly in one county and partly in another, the County Superintendent must apportion to such district such proportion of the school money to which such district is entitled, as the number of school census children residing in that portion of the district situate in his county bears to the whole number of school census children in the whole district. The text-books to be used, and the rules governing the school in such district, shall be those adopted by the Board of Education of the county in which a majority of the census children of such district reside. The Trustees and teachers of joint districts shall make to the Superintendents of each county in which the district is located, the reports which other Trustees and teachers are required to make, and also the number of pupils attending the school from each county. [In effect April 7, 1880.]

ARTICLE VI.

ELECTIONS FOR SCHOOL TRUSTEES.

§ 1593. Elections for Trustees, when and where held.
§ 1594. Elections in new districts.
§ 1595. Notices of election.
§ 1596. Judges and Inspectors, how appointed
§ 1597. Opening and closing polls.
§ 1598. Who may vote.
§ 1599. Voting must be by ballot.
§ 1600. Challenges.
§ 1601. Poll lists.
§ 1602. Certificates of election.

1593. An election for School Trustees must be held in each district on the first Saturday of June of each year, at the district school house, if there is one, and if there is none, at a place to be designated by the Board of Trustees:

1. The number of School Trustees for any school district, except when City Boards are otherwise authorized by law, shall be three. No person shall be deemed ineligible to the office of Trustee on account of sex.

2. In new school districts, or in a case of vacancy for any cause in an old one, the School Trustees shall be elected to hold office for one, two, and three years respectively, from the first Saturday of July next succeeding their election.

3. Except as provided in subdivision second of this section, one Trustee shall be elected annually, to hold office for three years, or until his successor shall be elected and qualified. [In effect March 4, 1881.]

1594. Within thirty days after the formation of a new district an election must be held for Trustees. Any three electors of the district may give notice of it in the same manner as notice is required to be given of the annual election.

1595. Not less than ten days before the election required under section fifteen hundred and ninety-three, the Trustees must post notices in three public places in the district, which notices must specify the time and place of election, and the hours during which the polls will be kept open; if within five days of the election the Trustees have failed to post the notices required under this section, then any three electors of the district may give notice of such election. [In effect March 28, 1874.]

1596. The Trustees must appoint the Inspector and Judges of Election; if none are so appointed, or if they are not present at the time for opening the polls, the electors present may appoint them.

1597. In districts in which the number of children between five and seventeen years of age exceed five hundred, the polls must be opened at eight o'clock A.M., and kept open until sundown. In other districts the polls must not be opened before nine o'clock A.M., nor kept open less than four hours. [In effect April 7, 1880.]

1598. Every qualified elector of the county, who has resided in the district for thirty days next preceding the election, may vote thereat. [In effect April 7, 1880.]

1599. The voting must be by ballot; *provided*, that the provisions of sections eleven hundred and eighty-seven and eleven hundred and ninety-one may be dispensed with. [In effect March 28, 1874.]

1600. Any person offering to vote may be challenged by any elector of the district, and the Judges of Election must thereupon administer to the person challenged an oath, in substance as follows: "You do swear that you are a citizen of the United States, that you are twenty-one years of age, that you have resided in this State one year, in this county ninety days, and in this school district thirty days next preceding this election, and that your name is on the Great Register of this county, and that you have not before voted this day." If he takes the oath prescribed in this section, his vote must be received, otherwise his vote must be rejected. [In effect April 7, 1880.]

1601. A poll and tally list must be kept and returned to the Board of Trustees.

1602. The officers of election must, after counting the votes, make and deliver certificates of election to the persons elected, a copy of which, with the oath of office attached, must be forwarded to the County Superintendent. [In effect March 28, 1874.]

ARTICLE VII.

BOARDS OF TRUSTEES OF SCHOOL DISTRICTS, AND CITY BOARDS OF EDUCATION.

§ 1611. School district government.
§ 1612. Terms of office, new districts, etc.
§ 1613. Term of office.
§ 1614. Vacancies, how filled.
§ 1615. Trustees of old, hold over in new, districts.
§ 1616. Boards of Education provided for by special statutes.
§ 1617. General powers of Boards of Trustees and of Education.

§ 1618. Teachers' salaries in certain cities. (Unconstitutional.)
§ 1619. Must maintain all schools for equal length of time.
§ 1620. Stationery, etc., to be furnished to pupils.
§ 1621. School moneys, how used.
§ 1622. Same.
§ 1623. Liabilities of Trustees on contracts.
§ 1624. Liability of Board for dereliction as to school moneys.

1611. Except when otherwise authorized by law, every school district shall be under the control of a Board of School Trustees, consisting of three members. [In effect April 7, 1880.]

1612. In school districts newly organized, or in case of vacancies, for any cause, in an old one, three School Trustees must be elected, to hold office for one, two, and three years, respectively, from the first Saturday in July next succeeding their election. [In effect March 28, 1874.]

1613. The term of office of School Trustees is three years from the first Saturday in July next succeeding their election.

1614. Vacancies in office of School Trustees must be filled until the next annual election by appointment made by the School Superintendent, and then by election for the unexpired term.

1615. When a new district is organized, such of the Trustees of the old as reside in the new district are Trustees of the latter.

1616. Boards of Education are elected in cities under the provisions of the laws governing such cities, and their powers and duties are as prescribed in such laws, except as otherwise in this chapter provided. [In effect April 7, 1880.]

1617. The powers and duties of Trustees of school districts, and of Boards of Education in cities, are as follows:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the State Board of Education, for their own government and the government of schools.
2. To manage and control the school property within their districts.
3. To purchase school furniture and apparatus, and such other things as may be necessary for the use of schools.
4. To rent, furnish, repair, and insure the school property of their respective districts.
5. When directed by a vote of their district, to build school houses, or to purchase or sell school lots.

6. To make, in the name of the district, conveyances of all property belonging to the district and sold by them.

7. To employ the teachers, janitors, and employees of schools; to fix and order paid their compensation, unless the same be otherwise prescribed by law; *provided*, that no Board of Trustees shall enter into any contract with such employees to extend beyond the thirtieth day of June next ensuing.

8. To suspend or expel pupils for misconduct.

9. To exclude from schools children under six years of age.

10. To enforce in schools the course of study and the use of text-books prescribed and adopted by the proper authority.

11. To appoint District Librarians, and enforce the rules prescribed for the government of district libraries.

12. To exclude from schools and school libraries all books, publications, or papers of sectarian, partisan, or denominational character.

13. To furnish books for the children of parents unable to furnish them; the books so furnished to belong to the district, and to be kept in the district school library when not in use.

14. To keep a register, open to the inspection of the public, of all children applying for and entitled to be admitted in the schools, and to notify the parent or guardian of such children when vacancies occur, and receive such children in the schools in the order in which they are registered.

15. To make arrangements with the Trustees of any other district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school; and in case the Trustees fail to agree, the parents of such children may appeal to the Superintendent of Schools, whose decision shall be final.

16. On or before the first day of May, in each year, to appoint a School Census Marshal, and notify the Superintendent of Schools thereof.

17. To make an annual report, on or before the first day of July, to the Superintendent of Schools, in the manner and form and on the blanks prescribed by the Superintendent of Public Instruction.

18. To make a report, whenever required, directly to the Superintendent of Public Instruction, of the text-books used in their schools.

19. To visit every school in their district at least once in each term, and examine carefully into its management, condition, and wants. This clause to apply to each and every member of the Board of Trustees.

20. Boards of Trustees may call meetings of the qualified electors of the district for determining or changing the loca-

tion of the school house, or for consultation in regard to any litigation in which the district may be engaged, or be likely to become engaged, or in regard to any other affairs of the district. Such meetings shall be called by posting notices in the usual places for not less than three weeks previous to the time for which the meeting shall be called, which notices shall specify the purposes for which said meeting shall be called, and no other business shall be transacted at such meetings. District meetings shall be organized by choosing a Chairman from the electors present, and the District Clerk shall be Clerk of the meeting, and shall enter the minutes thereof in the records of the district. A meeting so called shall be competent to instruct the Board of Trustees:

One—In regard to the location or change of location of the school house;

Two—In regard to the purchase and sale of school sites;

Three—In regard to prosecuting, settling, or compromising any litigation in which the district may be engaged, or be likely to become engaged, and may vote money, not exceeding one hundred dollars in any one year, for any of those purposes, in addition to any amount which may be raised by the sale of district school property. All funds raised by sale of school property may be disposed of by direction of a district meeting. District meetings may be adjourned from time to time, as found necessary; and all votes instructing the Board of Trustees shall be taken by ballot, or by ayes and noes vote, as the meeting may determine. The Board of Trustees shall, in all cases, be bound by the instructions of the district meeting in regard to the subjects mentioned in this section. [In effect March 4, 1881.]

SUBDIVISION 7. Compensation of teachers—Traylor Act to increase, purporting to add § 1618, held local and unconstitutional, Earle v. Board Education of San Francisco, 55 Cal. 489; as amendment of this subdivision, inoperative, 55 Cal. 493.

1618. *First*—In all consolidated cities and counties containing more than one hundred thousand inhabitants, the following salaries shall be paid to teachers in the schools: To principals of grammar schools, two thousand four hundred dollars per annum; to vice-principals of grammar schools, one thousand six hundred dollars per annum; to assistants of grammar schools, first and second grades, of ten years' experience, one thousand and eighty dollars per annum; to assistants of grammar schools, first and second grades, of five years' experience, nine hundred and sixty dollars per annum; to assistants of grammar schools, third and fourth grades, of ten years' experience, nine hundred and ninety-six dollars per annum; of five years' experience, nine hundred and forty-eight dollars; to principals of primary schools, eight or more,

one thousand eight hundred dollars per annum; five classes and less than eight, one thousand five hundred dollars per annum; four classes and less, one thousand two hundred dollars per annum; to assistants of primary schools, ten years' experience, nine hundred and sixty dollars per annum; five years' experience, nine hundred dollars per annum; assistants of grammar and primary schools, fourth year, eight hundred and forty dollars per annum; third year, seven hundred and eighty dollars per annum; second year, seven hundred and twenty dollars per annum; first year, six hundred dollars per annum.

Second—When the Board of Education make their annual estimate of the amount of money required for purposes of salaries for teachers, they shall estimate the said amount upon the basis fixed by this section; and when the Board of Supervisors make their annual levy of the taxes required for purposes of salaries for teachers, they shall levy said amount also upon the basis fixed by this section, and the money so appropriated for teachers' salaries shall not be used for other purposes. [In effect April 2, 1880. But declared unconstitutional: see note under § 1617.]

1619. The Boards of Trustees and City Boards of Education must maintain all the schools established by them for an equal length of time during the year, and as far as practicable, with equal rights and privileges. [In effect April 7, 1880.]

Length of time during year—at least six months, Const. Cal. 1879, art. 9, § 5.

1620. Writing and drawing paper, pens, ink, blackboards, blackboard rubbers, crayons, and lead and slate pencils, for the use of the schools, must be furnished under the direction of the City Boards of Education and Boards of Trustees, and charges therefor must be audited and paid as other claims against the School Fund of their districts are audited and paid. [In effect March 4, 1881.]

1621. The Boards of Trustees and City Boards of Education must use the school moneys received from the State and county apportionments exclusively for the support of schools for that school year, until at least an eight months' school has been maintained; if, at the end of any year during which an eight months' school has been maintained, there is an unexpended balance, it may be used for the payment of claims against the district outstanding, or it may be used for the year succeeding. Any balance remaining on hand at the end of any school year in which school has not been maintained eight months, shall be reapportioned by the Superintendent of Schools as other moneys are apportioned. [In effect March 4, 1881.]

Notwithstanding this section—August apportionment of 1880 to be used to pay salaries of teachers for services rendered prior to June 30, 1880; see Stats. 1880, p. 261 or 75.

1622. Boards of Trustees may use the county school moneys for any of the purposes authorized by this chapter, but all State school moneys must, except the ten per cent. reserved for district school library purposes, be applied exclusively for the payment of teachers of primary and grammar schools. [In effect April 7, 1880.]

Exclusively for primary and grammar school—revenue derived from State School Fund and tax, limited to support of such schools, Const. Cal. 1879, art. 9, § 6.

1623. Boards of Trustees are liable as such, in the name of the district, for any judgment against the district for salary due any teacher on contract, and for all debts contracted under the provisions of this chapter, and they must pay such judgment or liabilities out of the school moneys to the credit of such district; *provided*, that the contracts mentioned in this section are not in excess of the school moneys accruing to the district for the school year for which the contracts are made, otherwise the district shall not be held liable. [In effect March 28, 1874.]

1624. If any Board of Trustees, or City Board of Education, fail to appoint a Census Marshal at the proper time, and through such failure the district is omitted in the apportionment of school moneys, the Trustees or members of the City Board of Education are jointly and severally personally liable to the district for the full amount which the district would have received but for such failure; and the amount may be recovered in an action brought by any citizen of such district or city, in the name of and for the benefit of the district or city. [In effect April 7, 1880.]

Census Marshals—§§ 1634-1640.

ARTICLE VIII.

DISTRICT CENSUS MARSHALS.

§ 1634. Duty of Census Marshal.
§ 1635. Where district in two counties.
§ 1636. Report of.
§ 1637. Children absent at school to be listed.
§ 1638. Children of non-residents, when not to be included.
§ 1639. Compensation of Marshal.
§ 1640. Failure to report a misdemeanor.

1634. It is the duty of the Census Marshal:

1. To take annually, between the fifteenth and thirty-first days of May, inclusive, a census of all children under seventeen years of age who were residents of his district on said fifteenth day of May.

2. To report the result of his labors to the Superintendent of Schools (or to the Board of Education, in cities) on or before the fifth day of June in each year.

3. He shall visit each habitation, home, residence, domicile, or place of abode in his district, and by actual observation and interrogation enumerate the census children of the same. [In effect March 4, 1881.]

1635. Whenever a district is formed, lying partly in two adjoining counties, the Census Marshal must report to each County Superintendent the number of children in each county. [In effect March 28, 1874.]

1636. His report must be made under oath, upon blanks furnished by the Superintendent of Public Instruction, and must show:

1. The number, age, sex, color, and nationality of the children listed.

2. The names of the parents or guardians of said children.

3. Such other facts as the Superintendent of Public Instruction may designate.

4. The Census Marshal shall have power to administer oaths to parents and guardians.

5. If, at any time, the Superintendent of Schools has reason to believe that a correct report has not been returned, he may appoint a Census Marshal, have the census retaken, and the compensation for the same shall be audited and paid as provided in section one thousand six hundred and thirty-nine of this Code. [In effect March 4, 1881.]

1637. He must include in his report all children (whose parents or guardians are residents of the district) that are absent attending institutions of learning.

1638. He must not include in his report children who are attending institutions of learning, or such benevolent institutions as Deaf and Dumb, Blind, and Orphan Asylums, in his district, but whose parents or guardians do not reside therein. [In effect March 28, 1874.]

1639. The compensation of Census Marshals must be audited and paid as other claims upon the School Fund of the district are audited and paid.

1640. If the Census Marshal neglect or refuses to make his report at the time and in the manner herein required, or to perform any other duty devolved upon him, he must be deemed guilty of a misdemeanor, and, on conviction, be punished by fine or imprisonment. [In effect March 13, 1874.]

ARTICLE IX.

CLERKS OF SCHOOL DISTRICTS.

§ 1649. When and how elected.
§ 1650. General duties of.
§ 1651. When to provide supplies, etc.
§ 1652. When to act as Marshal, Assessor, or Collector. (Repealed.)

1649. Boards of Trustees must annually, on the first Saturday of July, meet and elect one of their number Clerk of the district.

1650. It is the duty of the Clerk:

1. To act as Clerk of the Board, and keep a record of their proceedings;
2. To keep an account of the receipts and expenditures of school moneys;
3. To keep his record and accounts open to the inspection of the electors of the district;
4. To perform such other duties as may be prescribed by the Board.

1651. The Clerk of each district must, under the direction of the Board of Trustees, provide all school supplies authorized by this chapter, and keep the school house in repair during the time school is taught therein.

1652. Repealed. [In effect April 7, 1880.]

ARTICLE X.

SCHOOLS.

§ 1662. Who may be admitted to.
§ 1663. Schools to be graded.
§ 1664. To be taught in the English language.
§ 1665. Course of instruction.
§ 1666. Other studies.
§ 1667. Instruction in manners, etc.
§ 1668. Physical exercise, etc.
§ 1669. Schools for negro and Indian children. (Repealed.)
§ 1670. How established. (Repealed.)
§ 1671. Governed by same rules as schools for whites. (Repealed.)
§ 1672. Sectarian books and teachings prohibited.
§ 1673. Duration of daily sessions.

1662. Every school, unless otherwise provided by law, must be open for the admission of all children between six and twenty-one years of age, residing in the district; and the Board of Trustees, or City Board of Education, have power to admit adults and children not residing in the district, whenever good reasons exist therefor. Trustees shall have the power to exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases. [In effect April 7, 1880.]

All white children—wording before amdt. 1880. Under similar provision of school law (Stats. 1870, p. 838), held that colored children could not be excluded where no separate schools maintained for them, 48 Cal. 37.

1663. All schools, unless otherwise provided by law, must be divided into primary and grammar grades. [In effect April 7, 1880.]

1664. All schools must be taught in the English language.

1665. Instruction must be given in the following branches, in the several grades in which each may be required, viz: Reading, writing, orthography, aritmetic, geography, grammar, history of the United States, elements of physiology, vocal music, elements of book-keeping, and industrial drawing. [In effect April 7, 1880.]

1666. Other studies may be authorized by the State Board of Education, or Board of Education of any county, city, or city and county; but no such studies can be pursued to the neglect or exclusion of the studies in the preceding section specified. [In effect April 7, 1880.]

1667. Instruction must be given in all grades of schools, and in all classes, during the entire school course, in manners and morals.

1668. Attention must be given to such physical exercises for the pupils as may be conducive to health and vigor of body as well as mind, and to the ventilation and temperature of school rooms.

1669. Repealed. [In effect April 7, 1880.]

1670. Repealed. [In effect April 7, 1880.]

1671. Repealed. [In effect April 7, 1880.]

1672. No publication of a sectarian, partisan, or denominational character must be used or distributed in any school,

or be made a part of any school library; nor must any sectarian or denominational doctrine be taught therein. Any school district, town, or city, the officers of which knowingly allow any schools to be taught in violation of these provisions, forfeits all right to any State or county apportionment of school moneys; and, upon satisfactory evidence of such violation, the Superintendent of Public Instruction and School Superintendent must withhold both State and county apportionments.

No sectarian or denominational doctrine—to be taught, or instruction therein to be permitted, in common schools, Const. Cal. 1879, art. 9, § 8.

Public money—never to be appropriated for sectarian or private school, Const. Cal. 1879, art. 9, § 8.

1673. No school must be continued in session more than six hours a day; and no pupil under eight years of age must be kept in school more than four hours per day. Any violation of the provisions of this section must be treated in the same manner as a violation of the provisions of the preceding section.

ARTICLE XI.

PUPILS.

§ 1683. Pupils, how admitted.
§ 1684. Must submit to regulations.
§ 1685. Suspension and expulsion of.
§ 1686. Defacing school property, liabilities for.
§ 1687. Experienced teachers for beginners.

1683. Pupils must be admitted into the schools in the order in which they apply to be registered.

Act to enforce educational rights of children—imposing on their parents, guardians, etc., the legal duty of sending them to school, Stats. 1874, p. 751.

1684. All pupils must comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of such schools.

1685. Continued willful disobedience, or open defiance of the authority of the teacher, constitutes good cause for expulsion from school; and habitual profanity and vulgarity good cause for suspension from school.

1686. Any pupil who cuts, defaces, or otherwise injures any school house, fences, or outbuildings thereof, is liable to suspension or expulsion, and on the complaint of the teacher

or Trustees, the parents or guardians of such pupil shall be liable for all damages. [In effect March 28, 1874.]

1687. In cities having graded schools, beginners shall be taught, for the first two years, by teachers who have had at least four years experience; and such teachers shall rank, in point of salary, with those of first grade.

ARTICLE XII.

TEACHERS.

§ 1696. General duties of teachers.
§ 1697. School month defined.
§ 1698. Appeal from premature dismissal of teacher.
§ 1699. Appeal where teacher's salary withheld.
§ 1700. No warrant to be drawn in favor of a teacher unless he performs his duties.
§ 1701. Nor unless he hold certificate and was employed.
§ 1702. Duties of teachers as to ethical instruction.
§ 1704. Teachers must be eighteen years of age.

1696. Every teacher in the public schools must:

1. Before assuming charge of a school, file his certificate with the County Superintendent.

2. On taking charge of a school, or in closing a term of school, immediately notify the County Superintendent of such fact.

3. Enforce the course of study, the use of text-books, and the rules and regulations prescribed for schools.

4. Hold pupils to a strict account for disorderly conduct on the way to and from school, on the play grounds, or during recess; suspend, for good cause, any pupil in the school, and report such suspension to the Board of Trustees, or City Board of Education, for review. If such action is not sustained by them, the teacher may appeal to the County Superintendent, whose decision shall be final.

5. Keep a State School Register.

6. Make an annual report to the County Superintendent at the time and in the manner and on the blanks prescribed by the Superintendent of Public Instruction. Any school teacher who shall end any school term before the close of the school year, shall make a report to the County Superintendent immediately after the close of such term; and any teacher who may be teaching any school at the end of the school year shall, in his or her annual report, include all statistics for the entire school year, notwithstanding any previous report for a part of the year.

7. Make such other reports as may be required by the Superintendent of Public Instruction, County Superintendent, or Board of Trustees, or City Board of Education. [In effect April 7, 1880.]

1697. A school month is construed and taken to be twenty school days, or four weeks of five school days each.

1698. In case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and Board of Trustees, for alleged unfitness or incompetence, or violation of rules, the teacher may appeal to the School Superintendent, and if the Superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated.

1699. Any teacher whose salary is withheld may appeal to the Superintendent of Public Instruction.

1700. No warrant must be drawn in favor of any teacher, unless the officer whose duty it is to draw such warrant is satisfied that the teacher has faithfully performed all the duties prescribed in section sixteen hundred and ninety-six. [In effect March 28, 1874.]

Female teachers—to receive same compensation as males, Stats. 1874, p. 938.

1701. No requisition for a warrant shall be drawn in favor of any teacher, unless such teacher is the holder of a proper certificate, in force for the full time for which the requisition is drawn, nor unless he was employed by the Board of Trustees, or City Board of Education, or by the Superintendent of Schools, as provided in section one thousand five hundred and forty-five. [In effect March 4, 1881.]

Before amendment 1880—section (as amd. 1874) contained proviso exempting from its operation special school laws of counties of Trinity, Shasta and Inyo, found in Stats. 1874, pp. 472, 509 (includes Mono); 1876, p. 122. Before amdt. 1881, "shall" read "must," and "County" came before "Superintendent of Schools."

No school district entitled to apportionment—unless all its teachers hold valid certificates, § 1860.

Certificates and diplomas continued in force—Stats. 1880, p. 4.

Temporary certificates—when may be issued, Stats. 1880, p. 14 or 7.

1702. It shall be the duty of all teachers to endeavor to impress on the minds of the pupils the principles of morality, (the) truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship. [In effect March 28, 1874.]

1703. [A new section, 1703, was included in the title of Act of April 7, 1880, but not in the Act itself.]

1704. No person is eligible to teach in any public school in this State, or to receive a certificate to teach, who has not attained the age of eighteen years. [In effect April 7, 1880.]

ARTICLE XIII.

DISTRICT LIBRARIES.

§ 1712. Library Fund, how expended.
§ 1713. Of what Fund consists.
§ 1714. Same.
§ 1715. Control and location of library.
§ 1716. Who may use.
§ 1717. Powers of Trustees.

1712. The Board of Trustees and City Board of Education must expend the Library Fund, together with such moneys as may be added thereto by donation, in the purchase of school apparatus, and books for a school library; and no warrant shall be drawn by the Superintendent of Schools upon the order of any Board of Trustees against the Library Fund of any district, unless such order is accompanied by an itemized bill, showing the books and apparatus, and the price of each, in payment for which the order is drawn. [In effect March 4, 1881.]

1713. Except in cities not divided into school districts, the Library Fund consists of ten per cent. of the State School Fund annually apportioned to the district, unless ten per cent. exceed fifty dollars, in which event it consists of fifty dollars annually taken from the Fund so apportioned.

1714. In cities not divided into school districts, the Library Fund consists of the sum of fifty dollars for every one thousand children between the ages of five and seventeen years, annually taken from the State School Fund apportioned to the city. [In effect March 4, 1881.]

1715. Libraries are under the control of the Board of Trustees, or City Board of Education, and must be kept, when practicable, in the school houses. [In effect April 7, 1880.]

1716. The library is free to all pupils of a suitable age belonging to the school, and any resident of the district may become entitled to its privileges by the payment of such a sum of money for life membership, or such annual or monthly fee as may be prescribed by the Trustees.

1717. The Trustees shall be held accountable for the proper care and preservation of the library, and shall have power to assess and collect all fines, penalties, and fees of membership, and to make all needful rules and regulations not provided for by the State Board of Education, and not inconsistent therewith; and they shall report annually to the County Superintendent all library statistics which may be required by the blanks furnished for the purpose by the Superintendent of Public Instruction. [In effect March 28, 1874.]

ARTICLE XIV.

EDUCATIONAL JOURNAL.

1726. SEC. 1. Section one thousand seven hundred and twenty-six, section one thousand seven hundred and twenty-seven, section one thousand seven hundred and twenty-eight, section one thousand seven hundred and twenty-nine, section one thousand seven hundred and thirty, and section one thousand seven hundred and thirty-one of the Political Code are hereby repealed. [In effect April 1, 1876.]

ARTICLE XV.

STATE BOARD OF EXAMINATION.

§ 1757. Fees from persons receiving life diplomas.

All except § 1757 repealed. [In effect April 7, 1880.]

1757. Every person receiving a life diploma must pay to the Board three dollars, to defray the expense of issuing such diploma.

ARTICLE XVI.

COUNTY BOARDS OF EXAMINATION.

§ 1768. County Boards, how composed.
§ 1769. President and ex officio Secretary.
§ 1770. Meetings and compensation.
§ 1771. Power of County Boards.
§ 1772. Certificates, to whom to be issued.
§ 1773. Examination, how conducted.
§ 1774. Standing to be indorsed on certificate.
§ 1775. Renewal and renewal of certificates.
§ 1776. Certificates to graduates of Normal School. (Repealed.)
§ 1777. Compensation of Board. (Repealed.)

1768. In each county having a population of less than one hundred thousand inhabitants, there shall be a County Board of Education, which shall consist of the County Superintendent of Schools and four members, of whom at least two shall always be experienced teachers, and holding first grade certificates, in full force and effect, appointed by the Board of Supervisors, who shall hold their office for two years, until their successors are appointed and qualified; *provided*, that the first members of the County Board of Education shall, at their first meeting, and immediately after organizing, classify themselves by lot in such a manner that two of the appointed members shall go out of office on the first day of July, eighteen hundred and eighty-one, and the other two appointed members on the first day of July, eighteen hundred and eighty-two. The Board of Supervisors of each county, at its first meeting after the passage of this Act, shall appoint four members of the County Board of Education, who shall enter upon their duties immediately after appointment, and thereafter annually shall appoint two members, who shall hold their offices for two years from and after the first day of July next succeeding their appointment. · A vacancy in the Board of Education may be filled at any time after its occurrence, by the Board of Supervisors. For the transaction of business, three members shall constitute a quorum; but no certificate shall be issued or revoked, nor any text-books adopted, except by an affirmative vote of three members. On the call of any member, the "ayes" and "noes" shall be taken upon any proposition, and the vote recorded in the minutes. If the Board of Supervisors of any county shall refuse or neglect to appoint a Board of Education as herein provided, then the County Superintendent shall appoint such Board of Education as hereinbefore provided, and the Board so appointed shall have all the rights, exercise all the powers, and be governed by all the regulations prescribed for County Boards, the same as if appointed by the Board of Supervisors. [In effect April 7, 1880.]

1769. The Superintendent of Schools shall be ex officio Secretary of the County Board of Education. The Board shall elect one of their members President. [In effect April 7, 1880.]

1770. The County Board of Education must meet and hold examinations for the granting of teachers' certificates semi-annually, at such times as the County Board of Education shall determine. All meetings of the Board of Education shall be public, and shall be held at the county seat, and the record of their proceedings shall be kept in the office of the Superintendent of Schools. The Board of Supervisors

shall allow to the members of the Board of Education a reasonable compensation for their services, payable out of the same fund and in the same manner as the Superintendent of Schools is paid; and all incidental expenses incurred by the Board of Education, including printing, shall be audited and paid as other claims against the General Fund of the county; *provided*, the same shall in no case exceed the sum of one hundred dollars per annum. [In effect March 4, 1881.]

1771. County Boards of Education have power:

1. To adopt rules and regulations, not inconsistent with the laws of this State, for their own government.
2. To prescribe and enforce rules for the examination of teachers.
3. To examine applicants, and to prescribe a standard of proficiency which will entitle the person examined to a certificate, and to grant certificates of two grades: (1) County certificates, first grade, valid for four years, and authorizing the holder to teach a grammar school; (2) county certificates, second grade, valid for two years, and authorizing the holder to teach a primary school.
4. To prescribe and enforce the use of a uniform series of text-books and a course of study in the public schools, and to adopt a list of books for district school libraries.
5. To revoke, for immoral or unprofessional conduct, or evident unfitness for teaching, the certificates granted by them.
6. To keep a record of its proceedings.
7. To issue diplomas of graduation from any of the public schools of the county, which diplomas shall be designed by the Superintendent of Public Instruction, and distributed as other blanks from his office. Diplomas shall be issued only to pupils who have passed an examination prescribed by the County Board of Education. Such diplomas shall be signed by the President and Secretary of the County Board, and the Principal of the school.
8. To adopt and use, in the authentication of its acts, an official seal.
9. All examination papers shall be kept on file in the office of the Superintendent of Schools, for at least one year, and shall be open for the inspection of school officers. [In effect March 4, 1881.]

Power of local Boards of Education—and their substitutes, over text-books and teachers' examinations, Const. Cal. 1879, art. 9, § 7, to which section conforms.

1772. Except as provided in section seventeen hundred and seventy-five, certificates must be granted only to those who have passed a satisfactory examination in all the studies

prescribed by the County Board of Education; *provided*, that applicants for second grade county certificates shall be required to pass an examination only in arithmetic, grammar, geography, composition, history of the United States, orthography, defining, penmanship, reading, and method of teaching. All certificates must bear the seal, and be signed by the Superintendent and a majority of the Board of Education by which they were granted. [In effect April 7, 1880.]

1773. All examinations must be conducted partly in writing and in part orally. [In effect March 28, 1874.]

1774. The standing of each applicant in each study, and in the class, must be indorsed on the back of each certificate issued upon examination, otherwise it is not a valid certificate. [In effect April 7, 1880.]

1775. The Board may also, without examination, grant county certificates, and fix the grade thereof, to the holders of life diplomas, California State Educational diplomas, California Normal School diplomas, California State University diplomas, when recommended by the Faculty of the University, and State Normal School diplomas of other States; and to the holders of unexpired State certificates of California, and may, without examination, renew certificates previously issued by them, or previously granted in their county; such renewed certificates to remain valid for the same length of time for which the original certificates were granted. County Boards of Education must issue certificates upon the blank forms to be prepared and distributed by the Superintendent of Public Instruction. [In effect March 4, 1881.]

Power of local Boards to grant certificates—Const. Cal. 1879, art. 9, § 7.

1776. Repealed. [In effect March 28, 1874. See § 1547.]

1777. Repealed. [In effect April 7, 1880.]

ARTICLE XVII.

CITY BOARDS OF EXAMINATION.

§ 1787. May be a Board in each city.
§ 1788. How constituted.
§ 1789. Chairman.
§ 1790. Meetings.
§ 1791. General powers.
§ 1792. Certificates granting revocation of.
§ 1793. Teachers' eligibility, how dismissed.
§ 1794. Compensation allowed.

1787. In every city, or city and county, having a Board of Education, there may be a City Board of Examination. [In effect March 4, 1881.]

1788. Each City Board of Examination consists of the City Superintendent of Schools, and four other members, residents of such city, at least two of whom shall be experienced teachers, elected by the City Board of Education, and holding office for two years. [In effect March 4, 1881.]

1789. The City Superintendent of Schools is Chairman of the City Board of Examination. [In effect March 4, 1881.]

1790. The City Board of Examination must meet and hold examinations for the granting of teachers' certificates semi-annually, at such times as they may determine. The place of meeting shall be designated by the Chairman. All meetings of the City Board of Examination shall be public, and the record of their proceedings shall be kept in the office of the City Superintendent of Schools. [In effect March 4, 1881.]

1791. Each City Board of Examination has power:

1. To adopt rules and regulations, not inconsistent with the laws of this State, for its own government, and for the examination of teachers.

2. To examine applicants, and to prescribe a standard of proficiency which will entitle the person examined to a certificate, and to grant city certificates of three grades: (1) High School certificates, valid for six years, and authorizing the holder to teach any primary, grammar, or high school in such city; (2) city certificates, first grade, valid for four years, and authorizing the holder to teach any primary or grammar school in such city; (3) city certificates, second grade, valid for two years, and authorizing the holder to teach any primary school in such city.

3. To grant special city certificates of the first grade, valid for four years, upon such special studies as may be authorized by the City Board of Education of such city. [In effect March 4, 1881.]

1792. The City Board of Examination may also, without examination, grant city certificates, and fix the grade thereof, to the holders of California life diplomas, California educational diplomas, California State Normal School diplomas, California State University diplomas (when recommended by the Faculty of the University), unexpired State certificates, city certificates granted in other cities of California, and the life diplomas and State Normal School diplomas of other

States; and may also, without examination, renew, and for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, revoke any certificates previously granted in such city, or city and county. [In effect March 4, 1881.]

1793. The holders of city certificates are eligible to teach in the cities in which such certificates were granted, in schools of grades corresponding to the grades of such certificates, and when elected, shall be dismissed only for violation of the rules of the Board of Education, or for incompetency, unprofessional or immoral conduct. The holders of special city certificates are eligible to teach the special studies mentioned in their certificates, in all the schools in the city in which such certificates were granted. [In effect March 4, 1881.]

1794. The members of the City Board of Examination shall receive such compensation as may be allowed them by the City Board of Education, payable out of the City School Fund. [In effect March 4, 1881.]

ARTICLE XVIII.

COUNTY SCHOOL TAX.

§ 1817. Estimate of County School Fund.
§ 1818. Levy of county tax.
§ 1819. Duty of Auditor if Supervisors fail to make levy.
§ 1820. Proceeds of tax to be paid into the County School Fund.

1817. The County Superintendent of each county having a population of less than one hundred thousand inhabitants must, on or before the first regular meeting of the Board of Supervisors in September in each year, furnish the Board of Supervisors and the Auditor, respectively, an estimate in writing of the minimum amount of county school fund needed for the ensuing year. This amount he must compute as follows:

1. He must ascertain, in the manner provided for in subdivisions one and two of section eighteen hundred and fifty-eight, the total number of teachers for the county.

2. He must calculate the amount required to be raised at five hundred dollars per teacher. From this amount he must deduct the total amount of State apportionments, less ten per cent. received by the county for the next preceding school year, and the remainder shall be the minimum amount of county school fund needed for the ensuing year; *provided*, that if this amount is less than sufficient to raise a sum equal to three dollars for each census child in the county, then the

minimum amount shall be such a sum as will be equal to three dollars for each census child in the county. [In effect April 7, 1880.]

1818. The Board of Supervisors of each county having less than one hundred thousand inhabitants must, annually, at the time of levying other county taxes, levy a tax to be known as the county school tax, the maximum rate of which must not exceed fifty cents on each one hundred dollars of taxable property in the county, nor the minimum rate be less than sufficient to raise a minimum amount reported by the County Superintendent, in accordance with the provisions of the preceding section. The Supervisors must determine the minimum rate of the county school tax as follows: they must deduct fifteen per cent. from the equalized value of the last general assessment roll, and the amount required to be raised, divided by the remainder of the assessment roll, is the rate to be levied; but if any fraction of a cent occur, it must be taken as a full cent on each one hundred dollars. [In effect April 7, 1880.]

1819. If the Supervisors fail to levy the tax as herein provided, then the Auditor must, and add it to the assessment roll.

1820. All moneys derived from this tax in each county must be paid into the Treasury thereof to the credit of the School Fund.

ARTICLE XIX.

DISTRICT SCHOOL TAX.

§ 1830. Elections to determine.
§ 1831. Notice of election.
§ 1832. Same.
§ 1833. Judges of, how appointed.
§ 1834. Ballots, what to contain.
§ 1835. Returns.
§ 1836. Trustees must report to Board of Supervisors.
§ 1837. Supervisors to levy tax.
§ 1838. Tax, how levied. (Repealed.)
§ 1839. Maximum rate of.
§ 1840 to 1852. (Repealed.)

1830. The Board of Trustees of any district may, when in their judgment it is advisable, call an election, and submit to the electors of the district the question whether a tax shall be raised to furnish additional school facilities for the district, or to maintain any school in such district, or for building one or more school houses, or for any two or all of these pur-

poses; *provided*, that where a tax has been collected for the purpose of building a school house, and the erection of said school house shall not have been commenced within one year from the time said tax was collected, the custodian of said money shall return the same to the parties from whom said tax was collected. [In effect March 4, 1881.]

Special tax for school purposes—can be legally levied only after an election, 39 Cal. 65, pursuant to the provisions of the statute, 39 Cal. 65; 52 Cal. 72, 621.

1831. Such election must be called by posting notices in three of the most public places in the district, for twenty days; and, also, if there is a newspaper in the county, by advertisement therein once a week for three weeks.

Posting notices—requisite, 52 Cal. 72, 621.

1832. Such notices must specify the time and place of holding the election, the amount of money proposed to be raised, and the purpose for which it is intended to be used.

Notice must specify—points mentioned, 52 Cal. 72, 621.

1833. The Trustees must appoint three Judges to conduct the election, and it must be held in all respects, as nearly as practicable, in conformity with the general election law; *provided*, that no particular form of ballot shall be required, nor shall any informalities in conducting such election invalidate the same, if the election shall have been otherwise fairly conducted. [In effect April 7, 1880.]

Election must conform to General Election Law—and where it does not, tax not recoverable, 52 Cal. 72, 621; but see proviso in section, inserted by amdt. 1880.

1834. At such elections the ballots must contain the words "Tax—Yes;" or, "Tax—No." [In effect April 7, 1880.]

1835. If a majority of the votes cast are "Tax—Yes," the officers of the election must certify the fact to the Board of Trustees. [In effect April 7, 1880.]

1836. The Trustees, upon the receipt of a certificate of such fact, must report the same to the Board of Supervisors, stating the amount of money to be raised. [In effect April 7, 1880.]

1837. The Board of Supervisors must, at the time of levying the county taxes, levy a tax upon all the taxable property in the district voting such tax, sufficient to raise the amount voted. The rate of taxation shall be ascertained by deducting fifteen per cent. for anticipated delinquencies from the aggregate assessed value of the property in the district,

as it appears on the assessment roll of the county, and then dividing the sum voted by the remainder of such aggregate assessed value. The taxes so levied shall be computed and entered on the assessment roll by the County Auditor, and collected at the same time and in the same manner as State and county taxes; and when collected shall be paid into the County Treasury for the use of the district in which the tax was voted. [In effect April 7, 1880.]

Before amendment 1880—this section and others, including succeeding repealed sections, provided for proceedings by the Assessor and Collector specially elected; and it was held that no other Assessor could make a valid assessment, 47 Cal. 616; 49 Cal. 421; and that the roll of such Assessor was prima facie evidence of its statements, 55 Cal. 393; and that no default could be entered in tax suit without applying to the Court, 53 Cal. 254.

1838. Repealed. [In effect April 7, 1880.]

1839. The maximum rate of tax levied by a district tax in any one year for building purposes must not exceed seventy cents on each hundred dollars, and the maximum rate levied for other school purposes must not exceed thirty cents on each hundred dollars in any one year.

1840 to **1852**, inclusive, repealed. [In effect April 7, 1880.]

ARTICLE XX.

GENERAL PROVISIONS RELATIVE TO SCHOOL FUNDS AND TAXES.

§ 1857. No compensation allowed to certain officer.
§ 1858. Apportionment of State and County School Fund.
§ 1859. Same.
§ 1860. Same.
§ 1861. What State School Fund may be used for.

1857. No assessor, tax collector, or county treasurer must charge or receive any fees or compensation whatever, for assessing, collecting, receiving, keeping, or disbursing any school moneys, but the whole moneys collected must be paid to the county treasurer; *provided*, that said assessor or tax collector, for services rendered in the collection of poll taxes, shall receive the sum of fifteen per cent. of the collections. [In effect February 9, 1881.]

Assessor, Assessing—words added by amdt. 1880.

Failure to pay over public moneys—is felony, Penal Code, § 425.

1858. All State school moneys apportioned by the Superintendent of Public Instruction must be apportioned to the several counties in proportion to the number of school census

children between the ages of five and seventeen years of age, as shown by the returns of the School Census Marshals of the preceding school year; *provided*, that the Indian children who are not living under the guardianship of white persons, and Mongolian children, shall not be included in the apportionment list. The School Superintendent in each county must apportion all State and county school moneys as follows:

1. He must ascertain the number of teachers each district is entitled to, by calculating one teacher for every seventy school census children between the ages of five and seventeen years of age, or fraction thereof not less than twenty school census children, as shown by the next preceding school census.

2. He must ascertain the total number of teachers for the county, by adding together the number of teachers assigned to the several districts.

3. Five hundred dollars shall be apportioned to each district for every teacher assigned it; *provided*, that to districts having ten and less than twenty school census children shall be apportioned four hundred dollars.

4. All school moneys remaining on hand after apportioning five hundred dollars to each district having twenty school census children or more for every teacher assigned it, and after apportioning four hundred dollars to districts having less than twenty school census children between the ages of five and seventeen years of age, must be apportioned to the several districts in proportion to the average daily attendance in each district during the preceding year. Census children where mentioned in this section shall be construed to mean those between the ages of five and seventeen years. [In effect March 4, 1881.]

1859. No school district is entitled to receive any apportionment of State or county school moneys which has not maintained a public school for at least six months during the then next preceding school year; but any new district, formed by the division of an old one, is entitled to its apportionment when school has been maintained in the old district before division, and in the new district after division, at least eight months in all. A district which is prevented by fire, flood, or prevailing epidemic, from maintaining a school for the length of time designated in this section, is nevertheless entitled to its apportionment of State and county school moneys. [In effect April 7, 1880.]

Six months' maintenance—of public school, to be provided for, Const. Cal. 1879, art. 9, § 5.

Section not to affect—apportionment for non-compliance during year ending June 30, 1880, by reason of the change requiring poll tax moneys to be paid into State instead of county school fund (per Const. Cal. 1879, art. 13, § 12). Stats. 1880, p. 261 or 75.

1860. No school district is entitled to receive any apportionment of State or county school moneys unless the teachers employed in the schools of such district hold legal certificates of fitness for teaching, in full force and effect.

1861. The State School Fund, excepting as otherwise provided in this chapter, must be used for no other purpose than the payment of teachers of primary and grammar schools. [In effect April 7, 1880.]

Primary and grammar schools—school revenues to be applied exclusively to the support of, Const. Cal. 1879, art. 9, § 6.

ARTICLE XXI.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC SCHOOLS.

§ 1867. Insulting teachers.
§ 1868. Disturbing schools.
§ 1869. Issuing irregular certificates
§ 1870. Officers acting as agents.
§ 1871. Certificates issued only to persons of good moral character.
§ 1872. Appeals from orders revoking certificates. (Repealed.)
§ 1873. School officers may administer oaths.
§ 1874. Rules governing adoption of text-books.
§ 1875. Penalties for neglect to use books adopted.
§ 1876. Certain persons not to be interested in contracts.
§ 1877. Printing and binding, by whom to be done.
§ 1878. School year, commencement and end.
§ 1879. Bribing members a felony. Testimony and investigation.
§ 1880. Election for issuance of school bonds.
§ 1881. Notice of election, how given.
§ 1882. What notice shall contain.
§ 1883. Time and manner of election.
§ 1884. Issuance of bonds, when directed.
§ 1885. Form of bonds, when payable.
§ 1886. Interest—sale of bonds.
§ 1887. Tax for interest and redemption of bonds.
§ 1888. Failure to levy tax, how remedied.

1867. Any parent, guardian, or other person, who shall insult or abuse any teacher, in the presence of the school, shall be guilty of a misdemeanor, and be liable to a fine of not less than ten, nor exceeding one hundred dollars. [In effect March 28, 1874.]

Corresponding provision—Penal Code, § 654.

1868. Any person who shall wilfully disturb any public school, or any public school meeting, shall be guilty of a misdemeanor, and liable to a fine on [of] not less than ten, nor more than one hundred dollars. [In effect March 28, 1874.]

1869. Any State, County, or City, or City and County Superintendent, or any State, County, or City, or City and

County Board of Education, who shall issue a certificate or diploma, except as provided for in this title, shall be guilty of a misdemeanor. [In effect April 7, 1880.]

1870. No officer named in this title, or teacher in any public school held under the provisions of this title, must act as agent for any author, publisher, bookseller, or other person, to introduce any book, apparatus, furniture, or any other article whatever, in the common schools of this State, or any one or more of them, or directly or indirectly contract for, or receive any gift or reward for so introducing or recommending the same; and any officer so acting or receiving, must be deemed guilty of a misdemeanor, and, on conviction, be punished by fine or imprisonment, and be removed from office. [In effect March 13, 1874.]

1871. Certificates shall be issued to such persons only as shall have given evidence of good moral character. [In effect April 7, 1880.]

1872. Repealed. [In effect April 7, 1880.]

1873. Every officer charged with the performance of duties under the provisions of this chapter, may administer and certify oaths relating to offices or official matters concerning public schools.

1874. In the adoption of text-books, all County, City, and City and County Boards of Education shall be governed by the following rules:

1. Any books hereafter adopted as part of a uniform series of text-books must be continued in use for not less than four years.

2. No change of text-books must be made at any other time than in the months of May or June of the year in which the change is made; and no changes shall be made to take effect until the beginning of the school term commencing after the thirtieth day of June of that year.

3. At least sixty days' notice of any proposed change in text-books must be given by publication in a newspaper of general circulation published in the county, if there be one, in which such change is to be made. If there be no newspaper puplished in the county, then such publication shall be made in any newspaper having a general circulation in the county. A copy of the newspaper containing such publication, with such notice marked, must immediately after the first publication thereof be by the Secretary of the Board transmitted to the State Board of Education, and the same, when

received, must be filed by the Secretary of said State Board. Said notice shall state what text-books it is proposed to change; that sealed bids or proposals will be received by the Board for furnishing books to replace them; the place where, and the day and the hour when, all bids or proposals will be opened, and that the Board reserves the right to reject any and all bids or proposals. Said notice shall be published in such newspaper as often as the same shall be issued after the first publication thereof; *provided*, that in the year eighteen hundred and eighty only fifteen days' notice need be given.

4. At the time and place specified in said notice, the Board shall meet and publicly open and read all of the bids or proposals which have been received by them, and shall make their award thereon within ten days thereafter.

5. Said bids or proposals must be accompanied by sample copies of the books proposed to be furnished, together with a statement of the wholesale and retail price at which the publisher agrees to furnish each book within the county, or at San Francisco, during the full time for which said books are to be adopted.

6. If no satisfactory bids or proposals are received, then the books already in use may continue in use until changed, as herein provided.

7. The publisher or publishers whose proposals shall be excepted, must enter into a written contract with the Board of Education making the award, and shall give a good and sufficient bond in a reasonable sum, to be fixed by the Board of Education, for the faithful performance thereof. Publishers of books already in use may bid under the provisions of this section as well as others, and such bids, if satisfactory, may be accepted by the Board. [In effect April 7, 1880.]

SUBDIVISION 1. **Four years' continuance in use—of text-books** adopted, required by Const. Cal. 1879, art. 9, § 7.

SUBDIVISION 3. **Notice of change of Text-Books**—section as amd. 1874 (subd. 1) required six months' notice, which was held essential and official publication held requisite in 49 Cal. 684.

Repealed Act—to prevent change in the text-books in use in the public schools, Stats. 1876, p. 1; repealed by Stats. 1880, p. 204 or 42.

1875. If any city or district refuse or neglect to use the books that may be prescribed, or use any other text-books in any of the prescribed studies, the Superintendent of Public Instruction must withhold from such city, town, or district, twenty-five per cent. of all State school moneys to which it may be entitled, until it comply; and any moneys so withheld must be apportioned by the Superintendent at the next annual apportionment in the same manner as other school moneys in the Treasury.

1876. No School Trustee, or member of any Board of Education, must be interested in any contract made by the Board of which he is a member; and any contract made in violation of this provision is void.

1877. All printing or binding required under this chapter must be executed by the State Printer in the form and manner and at the prices of other State printing, and be paid for in like manner.

1878. The school year begins on the first day of July, and ends on the last day of June.

1879. The offering of any valuable thing to any member of a Board of Education, with the intent thereby to influence his action in regard to the granting of any teacher's certificate, the appointment of any teacher, Superintendent, or other officer or employee, the adoption of any text-book, or the making of any contract to which the Board of Education of which he is a member shall be a party, or the acceptance by any member of a Board of Education of any valuable thing, with corrupt intent, shall be a felony, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the Penitentiary not exceeding one year, or by both such fine and imprisonment; and the person so convicted shall be forever disqualified from holding any office of trust or profit in this State. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with any offense described in this section, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony. Any contract or appointment obtained from a Board of Education by corrupt means shall be void. Any County Board of Supervisors, or any City Council, or any duly authorized committee thereof, may investigate the conduct of any member of a County, or City, or City and County Board of Education, or school officer, or employee, who may be charged with malfeasance in office, and in such capacity shall be entitled to the process of the Courts to compel the attendance of witnesses; and the officer who shall preside at such investigation shall have power to administer all necessary oaths. [In effect April 7, 1880.]

1880. The Board of Trustees of any school district may, when in their judgment it is advisable, call an election, and submit to the electors of the district whether bonds of such

district shall be issued and sold for the purpose of raising money for building or purchasing one or more school houses in such district, and furnishing the same, and for liquidating the indebtedness for school houses already erected. [In effect March 7, 1881.]

1881. Such election must be called by posting notices, signed by the Board, in three of the most public places in the district, for not less than twenty days before the election; and if there is a newspaper published in the county, by publishing such notice therein not less than once a week for three successive weeks. [In effect March 7, 1881.]

1882. Such notice must contain:

1. The time and place of holding such election;
2. The names of three Judges to conduct the same;
3. The hours during the day (not less than six hours) in which the polls will be open;
4. The amount and denomination of the bonds; the rate of interest, and the number of years, not exceeding ten, the whole or any part of said bonds are to run. [In effect March 7, 1881.]

1883. Such election shall be held, except as otherwise provided in this Act, in conformity with sections one thousand eight hundred and thirty-three, one thousand eight hundred and thirty-four, and one thousand eight hundred and thirty-five of the Political Code, excepting the words to appear upon the ballots, which shall be "Bonds, Yes," or "Bonds, No." [In effect March 7, 1881.]

1884. On the seventh day after said election, at one o'clock P. M., the returns having been made to the Board of Trustees, the Board must meet and canvass said returns, and if it appears that two-thirds of the votes cast at said election was in favor of issuing such bonds, then the Board shall cause an entry of that fact to be made upon its minutes, and shall certify to the Board of Supervisors of the county all the proceedings had in the premises, and thereupon said Board of Supervisors shall be and they are hereby authorized and directed to issue the bonds of such district, to the number and amount provided in such proceedings, payable out of the Building Fund of such district, naming the same, and that the money shall be raised by taxation upon the taxable property in said district for the redemption of said bonds, and the payment of the interest thereon; *provided*, that the total amount of bonds so issued shall not exceed five per cent. of the taxable property of the district, as shown by the last

equalized assessment book of the county. [In effect March 7, 1881.]

1885. The Board of Supervisors, by an order entered upon its minutes, shall prescribe the form of said bonds, and of the interest coupons attached thereto, and must fix the time when the whole or any part of the principal of said bonds shall be payable, which shall not be more than ten years from the date thereof. [In effect March 7, 1881.]

1886. Said bonds must not bear a greater amount of interest than eight per cent.; said interest to be payable annually, and said bonds must be sold in the manner prescribed by the Board of Supervisors, but for not less than par, and the proceeds of the sale thereof must be deposited in the County Treasury to the credit of the Building Fund of said school district, and be drawn out for the purpose aforesaid, as other school moneys are drawn out. [In effect March 7, 1881.]

1887. The Board of Supervisors, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay, annually, a proportion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run; and all moneys so levied, when collected, shall be paid into the County Treasury to the credit of the Building Fund of such district, and be used for the payment of principal and interest on said bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the County Treasurer, upon the warrant of the Auditor, out of the fund provided therefor; and it shall be the duty of the Auditor to cancel and file with the Treasurer the bonds and coupons as rapidly as they are paid. [In effect March 7, 1881.]

1888. If the Board of Supervisors of any county which has issued bonds under the provisions of this Act, shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the County Treasurer, and the payment thereof refused, the owner

may file the bond, together with all unpaid coupons, with the State Controller, taking his receipt therefor, and the same shall be registered in the State Controller's office; and the State Board of Equalization shall, at their next session, and at each annual equalization thereafter, add to the State tax to be levied in said district, a sufficient rate to realize the amount of principal or interest past due prior to next levy, and the same shall be levied and collected as a part of the State tax, and paid into the State Treasury, and passed to the special credit of such district bond tax, and shall be paid by warrants, as the payments mature, to the holder of such registered obligations as shown by the register in the office of the State Controller, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said district. [In effect March 7, 1881.]

TITLE IV.

State Militia.

CHAPTER I. ENROLLED MILITIA.
II. NATIONAL GUARD.
III. CALLING AND DRAFTING THE MILITIA INTO ACTUAL SERVICE.
IV. COURTS MARTIAL AND OF INQUIRY.
V. BOARD OF MILITARY AUDITORS.
VI. ADJUTANT GENERAL.

CHAPTER I.

Enrolled Militia.

§ 1895. Who are subject to military duty.
§ 1896. Who are exempt from military duty.
§ 1897. Assessor to enroll persons subject to military duty. Tax Collector to make enrollment in San Francisco.
§ 1898. Penalty for dereliction as to enrollment.
§ 1899. Board of Equalization to correct the roll.
§ 1900. Triplicate forwarded to Brigadier General.
§ 1901. Compensation of Assessors.
§ 1902. Muster roll to be made by Brigadier General.

1895. Every able-bodied male inhabitant of this State, except Mongolians and Indians, between the ages of eighteen and forty-five years, not exempt by law, is subject to military duty. But no alien is obliged to serve or bear arms against the State to which his allegiance is due.

Militia, Constitutional provisions as to—in State Constitution. Article devoted to, art. 8. Banners or flags of other State or nation not to be carried, art. 8, § 2 (1879). Commissions of officers, Governor to sign, art. 5, § 14; art. 8, § 1. Duty, electors' exemption from on day of election, art. 2, § 3. Fine, no imprisonment for, in time of peace, art. 1, § 15. Governor is Commander-in-Chief of, art. 5, § 5; when empowered to call forth, art. 8, § 1; to sign commissions, see Commissions. Officers not disqualified for civil office, art. 4, § 20; election or appointment, art. 8, § 1; commissions of, see that head. Organization and discipline, Legislature to provide for, art. 8, § 1.

Military—subordinate to civil power, see Const. Cal., art. 1, § 12; same for interdiction of standing army and quartering of soldiers.

1896. The following persons are exempt from military duty and enrollment:

1. Ministers of Religion.
2. Civil and military officers of the United States.
3. Officers of foreign Governments.
4. Civil officers of the State of California.
5. All persons exempted from military duty by the laws of the United States.

1897. The District or County Assessor of each and every revenue district or county in this State must, at the same time in each year when he prepares a roll containing the taxable inhabitants of his district or county, enroll all the inhabitants thereof subject to military duty, which roll must be sworn to by him and delivered to the Clerk of the Board of Supervisors at the same time he delivers the assessment roll. In the City and County of San Francisco the Tax Collector must perform the duties by this section imposed upon Assessors.

1898. If any Assessor, or the Tax Collector of the City and County of San Francisco, neglects or refuses to perform any of the duties required of him by this chapter, he is subject to the same liabilities as are provided by law for a neglect or refusal to perform any of the duties required of him in the assessment of taxes, and, in addition, forfeits not less than three hundred nor more than one thousand dollars, to be sued for in the name of the people of the State by the District Attorney of the respective county, and when recovered to be paid into the Military Fund of the State. If the Clerk of the Board of Equalization neglects or refuses to make and deliver to the Brigadier General of the Brigade to which his county belongs the triplicate of the military assessment roll, as directed in this chapter, he forfeits not less than three hundred nor more than five hundred dollars, to be sued for, recovered, and disposed of in the same manner.

1899. The Board of Equalization must correct the roll at the same time and in the same manner as is prescribed by law for the correction of the assessment roll.

1900. The Clerk of the Board of Supervisors must deliver to the Brigadier General of the Brigade to which his county belongs, a triplicate of such roll, certified by him, within ten days after the Board of Equalization have completed their corrections.

1901. The compensation of Assessors for making out the military roll must be determined by the Boards of Supervisors of the several counties, at the rate of five dollars for each one hundred names of persons returned by the Assessors as subject to military duty.

1902. Each Brigadier General must, on the first Monday in October of each year, make from the rolls received by him a muster roll, showing the number of persons within the limits of his command subject to military duty, the original of which, signed by him, must be filed in his office, and a copy thereof transmitted at once to the Adjutant General.

CHAPTER II.

The National Guard.

ARTICLE I. GENERAL PROVISIONS RELATING TO NATIONAL GUARD.
II. COMPANIES.
III. REGIMENTS AND BATTALIONS.
IV. DIVISIONS AND BRIGADES.
V. PARADES AND DRILLS.

ARTICLE I.

GENERAL PROVISIONS RELATING TO THE NATIONAL GUARD.

§ 1912. National Guard, of what it consists.
§ 1913. Board of Location and Organization.
§ 1914. National Guard to be organized into regiments.
§ 1915. What officers belong to.
§ 1916. Governor Commander-in-Chief.
§ 1917. Staff of Commander-in-Chief.
§ 1918. Appointment and term of office of Generals.
§ 1919. Restrictions in residence of staff officers.
§ 1920. Effect of line officers accepting commissions on staff.
§ 1921. Oath of officers and members.
§ 1922. System of instruction.
§ 1923. Uniform.
§ 1924. Rank of officer.
§ 1925. officers reëlected not to be recommissioned.
§ 1926. Resignations, how made.
§ 1927. Vacancies in elective offices, how filled.
§ 1928. Absence or removal, when deemed resignation.
§ 1929. Discharges, when and by whom granted.
§ 1930. Disobedience of orders, unsoldierlike conduct—penalty.
§ 1931. Interrupting officer or private in discharge of his duty—penalty.
§ 1932. Expulsion for disgraceful cause bar to reëntry.
§ 1933. Protection of parade ground.
§ 1934. By-laws.
§ 1935. Fines.
§ 1936. Exemptions from poll tax, etc.
§ 1937. List of persons so exempt to be given to Assessor.
§ 1938. Commander-in-Chief may disband any portion of National Guard.
§ 1939. Rules and regulations of United States army—how far applicable generally.
§ 1940. No fees allowed to officers for administering oaths.
§ 1941. Power of Commander-in-Chief.
§ 1942. What colors to carry.
§ 1943. Pension.
§ 1944. Forfeiture of claims.

1912. The organized uniformed militia of the State of California are known as the National Guard of California. This force shall not exceed forty companies, and must be located throughout the State with reference to the military wants thereof, means of concentration, and other military requirements. [In effect March 12, 1878.]

1913. The Commander-in-Chief, Major General, Adjutant General, and the Brigadier General of each brigade, constitute a Board for location and organization of the National Guard within such brigade, with power to transfer, attach, consolidate, or disband companies, and to reorganize, at pleasure, regiments and battalions. [In effect March 30, 1878.]

1914. All companies of the National Guard must, as far as practicable, be organized into regiments, battalions, and batteries.

1915. All commissioned officers of the staff of the Commander-in-Chief, the Adjutant General, and the officers of his staff, the Major General and Brigadier Generals, and all officers of their respective staffs, belong to the National Guard, and are at all times subject to be called into active service by the Commander-in-Chief; and when called into active service, each officer must be called and mustered according to his commission.

1916. The Governor is Commander-in-Chief of the National Guard.

Governor is Commander-in-Chief—Const. Cal., art. 5, § 5.

1917. His staff consists of one Adjutant General, with the rank of Major General; one Chief Engineer, one Paymaster General, one Judge Advocate General, one Inspector General of Rifle Practice, one Surgeon General, each with the rank of Colonel, and eight Aids-de-Camp, with the rank of Lieutenant Colonel, appointed by and holding office at the pleasure of the Commander-in-Chief, or until their successors are appointed and qualified. [In effect April 15, 1880.]

1918. The Commander-in-Chief, by and with the advice and consent of the Senate, must appoint one Major General, and for each brigade of the National Guard of California one Brigadier General, who must be citizens of the United States and of the State, and the Brigadier Generals must be residents of localities within the brigades for which they are appointed. They hold their offices until their successors are appointed and qualified. [In effect March 12, 1878.]

1919. The staff officers must be residents of the State and of their respective brigades.

1920. Any officer of a regiment, battalion, or company, accepting any staff appointment, except that of Adjutant and Quartermaster, is held to have resigned his commission in such regiment, battalion or company.

1921. All officers and soldiers of the National Guard, on becoming members, and before performing duty, and at each subsequent re-enlistment, must take and subscribe the following oath, which all commissioned officers thereof are authorized to administer: "I do solemnly swear, that I will support the Constitution of the United States and the Constitution of the State of California, and will maintain and defend the laws and all officers employed in administering the same." Which oath, certified by the officer administering the same, must be returned to the Adjutant-General, and be preserved with the rolls of companies. Oaths of re-enlisment shall show on the margin the number of re-enlistment. [In effect March 30, 1878.]

1922. The systems of instruction prescribed for the different arms of the United States Army must be followed in the military drills and instruction by the National Guard, and by the enrolled militia when called into active service. [In effect March 12, 1878.]

1923. The uniform of the National Guard is the same as that adopted and in use by similar troops in the army of the United States. Companies already organized may wear the uniform now in use until supplied by the State with the proper uniform; after which the uniform so supplied must be worn, except at company parades or drills. No moneys received from the State must be used or applied to the purchase of uniforms other than those first in this section mentioned. The uniform of Generals and staff officers is similar to that of officers of the same grade in the army of the United States.

1924. All commissioned officers of regiments, battalions, and companies of the National Guard, must take rank according to the date assigned them by their commissions; and when two of the same grade are of the same date their rank must be determined by length of previous military service in the State; and if of equal service, then by lot. Officers of regiments, battalions, and companies of the National Guard in all cases are of superior rank to officers of the enrolled militia of the same grade, irrespective of the date of their commissions.

1925. When an officer is re-elected no new commission issues, but a certificate of such election must be issued to him by the Adjutant General. In the event of a commission being lost or destroyed, on satisfactory proof being given of the same, the Commander-in-Chief shall issue a new commission, with rank from date of former commission. [In effect March 12, 1878.]

1926. Any officer resigning his commission must do so in writing, addressing the Adjutant General, giving his reasons therefor, and transmit the same through his immediate commanding officer, who will make his indorsement thereon, and the resignation takes effect when accepted by the Commander-in-Chief and announced in orders. [In effect March 12, 1878.]

1927. Vacancies in elective offices of the National Guard, not in active service, are filled by election. When vacancies occur at an election through the promotion of any officer, such vacancies may then and there be filled without further order. Election of company officers shall be presided over by an officer appointed for that purpose by the brigade commander, and such presiding officer shall give ten days notice of his appointment to all parties interested, by causing the order appointing him to be posted in the company armory and read to the company. He shall, within five days following the election, report the result of the said election to the brigade commander. [In effect March 12, 1878.]

1928. Any commissioned officer who removes from the limits of his brigade is deemed to have resigned, and the Major General, Brigadier General, or any commissioned officer who absents himself from the State for more than thirty days, without the permission of the Commander-in-Chief, is deemed to have resigned, and such resignation shall be announced in orders from the Adjutant General's office, immediately after the fact of such absence becomes officially known. [In effect March 12, 1878.]

1929. No officer of the National Guard inferior in grade to a regimental or battalion commander, or an officer commanding an unattached company, has power to grant discharges to non-commissioned officers, artificers, musicians, or privates All discharges must be in writing, and must set forth fully the cause of the discharge, and be signed by the officer granting it.

1930. Any officer, non-commissioned officer, musician, or private who disobeys the orders of his superior, uses reproach-

ful or abusive language to his superior, or misbehaves or demeans himself in an unofficer or unsoldierlike manner whilst under military orders, must be immediately arrested. If a non-commissioned officer or soldier on military duty, he must be disarmed and put under guard, and tried and punished by a Court-martial, according to law and military usage. [In effect March 12, 1878.]

Misdemeanor—by failure to attend parade, disobedience or disrespectful language, Penal Code, § 653.

1931. If any person interrupts, molests, or insults, by abusive words or behavior, any officer or private while in the performance of his military duty, he must be immediately put under guard and kept, at the discretion of the commanding officer of the forces engaged in the performance of such duty, until the setting of the sun of the same day on which the offense is committed.

1932. No dishonorably discharged non-commissioned officer, artificer, musician, or private, or member of a company discharged from the National Guard for any disgraceful cause, must be permitted to again enter any company of the National Guard except the offense is pardoned by the Commander-in-Chief. [In effect March 12, 1878.]

1933. The commanding officer of any parade, review, or drill, and the officer in charge of any rendezvous, may cause the ground selected for that purpose to be marked or designated in such a manner as not to obstruct the passage of travelers on any public highway; and if any person, during the occupation of such ground for such military purpose, enters upon such ground without the permission of the officer commanding or in charge, he may be put and kept under guard, by the order of such commander, until the setting of the sun of the same day.

1934. Regimental, battalion, and company rules of government and by-laws regularly adopted by a majority of the elected officers of such regiments and battalions, or members of companies, and approved by the Commander-in-Chief, may be adopted and enforced in such regiments, battalions, and companies, if they are not in conflict with the laws and regulations of this State. [In effect April 15, 1880.]

1935. All fines and penalties for non-attendance upon drills, parades, and inspections, legally determined and imposed under the provisions of such rules and by-laws, may be collected by action in Justice's Court, in the name of the people of the State of California; and the books and records

of regiments, battalions, and companies, and the proceedings under which delinquents are fined, are prima facie evidence of the facts therein stated. [Approved March 30; in effect July 6, 1874.]

Fine for delinquencies touching parades—Penal Code, § 652.

1936. All officers, musicians, and privates of the National Guard, who comply with all military duties as provided in this chapter, are entitled to the following privileges and exemptions, viz: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty, and from service on any posse comitatus. All officers, non-commissioned officers, musicians, and privates who have faithfully served in the military service of this State for the space of seven consecutive years, and receive the certificate of the Adjutant General certifying the same, are thereafter exempted from further military and jury duty, except in time of war, and the Adjutant General must issue such certificate of exemption when it appears that the party applying is entitled to the same. [In effect March 12, 1878.]

1937. Each commander of a company of the National Guard must make out a list, certified under oath before a Notary Public, on or before the first Monday in March of each year, of every officer, non-commissioned officer, musician, and private of the company entitled to exemptions, as provided by law, with the residence of each, which list must be transmitted to the Colonel, or commanding officer, of the regiment or battalion to which such company belongs, who must transmit the same, together with a list of his field and staff, and non-commissioned staff, made out in like manner, and certified by him under oath before a Notary Public, to the Brigadier General, which list, if correct and approved by the Brigadier General, must, by him, be served upon the County Assessor of the county in which such regiments, battalion, or companies are located; and the County Assessor must thereupon note opposite the names of all persons such exemptions. [In effect March 30, 1878.]

1938. The Commander-in-Chief may, at any time, for good and sufficient cause, disband any portion of the National Guard. [In effect March 12, 1878.]

1939. The rules and regulations of the army of the United States, so far as the same may be applicable and not inconsistent with the laws of this State, and the rules and regulations prescribed by the Commander-in-Chief, constitute the rules and regulations for the government of the National Guard. [In effect April 15, 1880.]

1940. No officer is entitled to charge or receive any fee or compensation for administering or certifying any oaths administered or certified under the provisions of this chapter.

1941. The Commander-in-Chief is authorized and has power to establish and prescribe such rules and regulations, forms, and precedents, not inconsistent with the provisions of the Codes, as he may deem proper for the use, government, and instruction of the National Guard, and to carry into full effect the provisions of the Codes relative thereto. Such rules, regulations, forms, and precedents shall, from time to time, be revised as may be deemed necessary, and shall be promulgated in orders, and compiled in such form as may be deemed advisable for the information of the National Guard. [In effect March 4, 1881.]

1942. The colors carried by organizations of the National Guard shall be such as are borne by similar organizations in the United States army; and no military organization provided for by the Constitution and laws of the State, and receiving State support, shall, while under arms, either for ceremony or duty, carry any device, banner, or flag of any State or nation, except that of the United States, or the State of California. [In effect April 15, 1880.]

Device, banner or flag—of other State or nation, not be carried, Const. Cal. 1879, art. 8, § 2, to which this section conforms.

1943. Every officer or soldier wounded or disabled in the service of the State shall have reasonable expenses paid him, and the widow and children of every officer or soldier killed in the service of the State shall be suitably provided for by the Legislature. [In effect March 12, 1878.]

1944. All claims against any appropriation made for military purposes payable to commanding officers, shall, at the discretion of the Board of Military Auditors, be forfeited to the State unless the demand is presented within six months after the time it becomes due. [In effect March 12, 1878.]

ARTICLE II.

COMPANIES, AND THE DISTRIBUTION OF ARMS

§ 1951. Applications for leave to organize companies.
§ 1952. If accepted the Brigadier General must appoint a person to organize.
§ 1953. Organization.
§ 1954. Brigadier-General to act upon certificate, and transmit it.
§ 1955. Company to be listed and officers commissioned.
§ 1956. Non-commissioned officers of companies.

§ 1957 Non-commissioned officers of batteries.
§ 1958. Company name or number.
§ 1959. Company roll and term of service.
§ 1960. Person not to be member of two companies at the same time.
§ 1961. Companies, how armed and equipped.
§ 1962. Number of officers and privates.
§ 1963. Requisition for arms and equipments.
§ 1964. Proceedings on approval of requisition.
§ 1965. Same—Bond.
§ 1966. Same.
§ 1967. Same.
§ 1968. Inspection of arms, etc.
§ 1969. Repair of arms, etc.
§ 1970. Musters and muster rolls.
§ 1971. Same.
§ 1972. Same.
§ 1973. Retired list.
§ 1974. Officers elected to appear for examination.
§ 1975. Candidates to be thoroughly examined.
§ 1976. Applications for membership.
§ 1977. Use of uniforms, property, etc.

1951. Whenever a sufficient number of persons, residents of any county in this State, subject to military duty, subscribe a call for the organization of a company, the Adjutant General, upon the application of such persons, and with the approval of the General of Brigade, must present the same to the Board for the organization of the National Guard.

1952. If such company is accepted, the Adjutant General must direct the Brigadier General to appoint some person, resident of the county, to open a book in which to enter the names of persons so applying, and must fix a time and place of meeting for the purpose of organization, by giving ten days notice thereof, by publication in some newspaper, or by posting notices in at least three public places in the county.

1953. The person appointed must:

1. Preside at such meeting and organize the same.
2. Superintend the election for commissioned officers of the company, which must be by ballot.
3. Make out, after such election, a list of persons organized, a certificate of each officer elected, together with a copy of the proceedings of the meeting, and a copy of his appointment, and of the notice of the meeting, certified by him, and transmit them to the Brigadier General commanding the brigade.

1954. The Brigadier General must, if found correct, transmit the same, with his approval, to the Adjutant General.

1955. 1. If such company has been organized and the officers elected in accordance with the provisions of law, orders,

and regulations, the company must be listed in the office of the Adjutant General as a company of the National Guard, and the officers elected, if commissioned, hold office for the term of two years.

2. All commissioned officers of the National Guard shall be commissioned by the Governor, but he may refuse to issue a commission to any officer elected or appointed, if, in his opinion, the person elected or appointed is in any way unqualified or unworthy to be an officer in the National Guard. [In effect April 15, 1880.]

No charge—by Secretary of State issuing commission, see § 26 of Act in Stats. 1880, p. 215 or 51.

1956. All company non-commissioned officers of the National Guard must be nominated by commanders of their respective companies, subject to the approval of the commanders of the regiment or battalion; and such non-commissioned officers cannot thereafter be removed or reduced in rank except as herein provided, or by the commander of the regiment or battalion, for neglect of duty or other sufficient cause.

1957. Commanders of batteries and unattached companies have the same authority with non-commissioned officers as is herein conferred upon commanders of regiments and battalions.

1958. Each company of the National Guard may adopt a distinct name; but, if attached, must be known by a particular letter or number in the regiment or battalion to which it belongs.

1959. All persons on entering the National Guard must sign a company roll, and join for not less than three years' service.

1960. No person can be a member of two companies at the same time; and any member of a company who removes beyond the limits of the county may be discharged from such company; and such discharge, as in all other cases, must be announced in orders from proper authority, and copies of all orders announcing discharges must be forwarded to brigade and general headquarters. [In effect April 15, 1880.]

1961. The companies of the National Guard are armed and equipped in the same manner as similar corps in the United States army.

1962. The companies of the National Guard are composed of the following officers and privates, viz:

1. *Cavalry*—Each Company of Cavalry, of one Captain, one First Lieutenant, one Senior and Junior Second Lieutenant, one First Sergeant, one Quartermaster Sergeant, six Sergeants, eight Corporals, two Trumpeters, one Farrier, and not less than forty nor more than one hundred privates.

2. *Infantry and Artillery*—Each Company of Infantry or Artillery, of one Captain, one First Lieutenant, and one Second Lieutenant, one First Sergeant, five Sergeants, eight Corporals, one Marker, two Drummers, one Fifer, and not less than forty nor more than one hundred and twenty privates.

3. *Light Batteries*—Light Batteries, of one Captain, two First Lieutenants, two Second Lieutenants, one First Sergeant, one Quartermaster Sergeant, six Sergeants, twelve Corporals, two Musicians, one Wagoner, and not less than forty nor more than one hundred privates.

4. *Gatling Batteries*—A Gatling Battery of four guns attached to a company of infantry will entitle that company to a Junior First Lieutenant and a Junior Second Lieutenant, four Sergeants, and four Corporals, in addition to those already provided in paragraph two. [In effect March 4, 1881.]

1963. When a company is organized, its commanding officer may make a requisition through the proper military channel for such arms and accouterments, ammunition, clothing, and stores as are required.

Military Academies—Act to furnish arms for, Stats. 1872, p. 121.

Arms, equipments, etc.—misdemeanor to unlawfully retain or dispose of, Penal Code, §§ 452, 453.

1964. If the Commander-in-Chief approve the requisition he must make an order upon the back thereof directing the issue by the Adjutant General, who must immediately notify the officer making the requisition that the arms, accouterments, and ammunition, or any portion thereof, are ready to be issued.

1965. Thereupon, such officer must give such bonds and security as may be required by the Adjutant General to secure the State and the company from loss on account of use or misapplication of any State property, or company funds and property. Said bond must be with two or more good and sufficient sureties, conditioned upon his faithful performance of all duties, and accounting for all property and moneys, both State and company funds, of which the company commander, as ex officio treasurer, shall be the custodian. [In effect April 15, 1880.]

1966. Such bonds being to his satisfaction, and on receiving duplicate receipts from such company officer, the Adjutant General must make the issue.

1967. The Adjutant General must file one copy of such receipts in his office, and transmit the other to the General of Brigade.

1968. All arms, equipments, and military stores, books, accounts, and records of all kinds, are subject to examination by the Inspectors and Ordnance Officers of the State, and of any other officer designated by the Commander-in-Chief or other commanding officer for that purpose. [In effect March 12, 1878.]

1969. If such officer finds any of such property out of repair, injured, or defective, he must immediately notify the facts to the Commander-in-Chief, through the proper channel, who, if the damages is not repaired and the defects and losses supplied within a reasonable time, must order the same to be done under the direction of some officer, and the vouchers for the expenses thereof, when audited by the State Board of Military Auditors, must be paid, on the warrant of the Controller, out of the appropriation for military purposes. [In effect March 30, 1878.]

1970. There must be an annual inspection and muster of all the troops of the National Guard in the month of July, each year, by brigade, regiment, battalion, or company, as may be deemed advisable by the brigade commander; and the commanding officer of each company must make out and certify triplicate muster rolls, showing the names and number of the members of the company, the officers in the order of their rank, and the privates in alphabetical order; and he must also attach to each roll a list of the ordnance, ordnance stores, accouterments, clothing, and other property of the State in possession of the company; a statement in which all moneys received from the State for the previous year have been expended, together with such other information as the Adjutant General or brigade commander may require. He must transmit, through the proper military channels, one copy of the roll and list attached to the Major General, one copy to the Brigadier General of his brigade, and one copy to the Adjutant General. [In effect April 15, 1880.]

1971 If such company forms a part of any organized battalion or regiment, the commanding officer thereof must transmit the same, with a muster roll of the field and staff

officers of his regiment or battalion, to the Adjutant General, through the proper channels of military correspondence

1972. When any regiment or battalion is composed of companies located in any one town or city of the State, the same may be mustered by its commanding officer as a regiment or battalion.

1973. 1. Any commissioned officer who has become disabled and incapable of longer performing the active duties of his office may, upon his own application, be placed upon the retired list.

2. If an officer, for either of the above reasons, desires to be placed upon the retired list, he shall make application to his brigade commander to appoint a Board of Surgeons, who shall examine him as to his disability, and if such disability has not been incurred by reason of any dereliction, they shall, if they deem proper, recommend that his application be granted; and, upon the approval of such application by the brigade commander and the Commander-in-Chief, the Adjutant General shall issue orders retiring such officer.

3. Any commissioned officer who shall have served as such in the National Guard of this State for the continuous period of eight years may, upon his own application, be placed upon the retired list, and withdrawn from active service and command, with the rank held by him at the time such application is made. Upon being officially notified by the brigade commander, attested by the Adjutant General of the State, the Commander-in-Chief shall cause orders to be issued retiring the officer who makes application therefor, in accordance with the provisions of this section.

4. The officers on the retired list shall only be subject to detail for duty by orders from the Commander-in-Chief; and he shall cause to be issued such orders as he may deem necessary, detailing them from duty upon Boards of officers for military purposes, Courts-martial, and Courts of inquiry, and for such other military duties as in his judgment may be advisable. When, however, officers on the retired list are detailed for active duty other than upon Boards of officers, Courts-martial, and Courts of inquiry, they shall only be entitled to the rank which properly belongs to the office the duties of which they are detailed to perform. When the duty ends, or the detail is canceled, the officer shall again return to the retired list, with his former retired rank. A roster of all officers on the retired list shall be kept in the Adjutant General's office, division headquarters, and at the brigade headquarters.

5. Officers on the retired list shall, on all occasions of duty, and on all occasions of ceremony, take rank next to officers of like rank upon the active list. [In effect March 4, 1881.]

1974. 1. Every elected officer of the National Guard must, upon his election to any office in the National Guard, appear before an Examining Board for examination as to his qualifications for the office to which he has been elected.

2. Such Board of officers shall consist of three commissioned officers for each brigade, to be designated by the Commander-in-Chief, and who may be removed at his pleasure.

3. The officers duly appointed to preside at any election shall, immediately after declaring the result of such election, notify the officer or officers elected that they must appear before the Examining Board for examination, when notified by that Board.

4. If the officer elected and duly notified does not appear before the said Examining Board when summoned by them, he shall be deemed to have declined his commission, and there shall be another election ordered by the brigade commander. The filing of a proper certificate of said Board with the brigade commander that the officer has failed to pass an examination, or declined to appear before the Board when notified, shall be deemed sufficient for ordering a new election. [In effect April 15, 1880.]

1975. The Board shall thoroughly examine the candidate for commission as to his military and general qualifications, and if, in the opinion of the majority of the Board, he is duly qualified, the fact shall be duly certified to the Commander-in-Chief. The Board shall examine the candidate for a commission as to his knowledge in the following:

1. The prescribed tactics.
2. The rules and regulations governing the United States army and the National Guard of California.
3. The revised articles of war.
4. The revisions of the Codes of California relative to the National Guard.
5. Forms of military orders, correspondence, records, and also as to general qualifications. [In effect April 15, 1880.]

Changes in section—inserted by amendments 1878 (see Stats. 1878, pp. 35, 44). Amendment of 1880 (Stats. 1880, p. 217 or 53) purported to repeal section of 1878, but named erroneous date, yet, as last expression of Legislative will, is probably in force.

1976. Applications or propositions for membership in any company of the National Guard shall only be made at a regular weekly meeting or assemblage of such company, and the names of such applicants shall be posted in a conspicuous

place in the company quarters, or armory, until the next succeeding regular weekly meeting or assemblage of such company, at which time, and not before, such applicants may be balloted for by the company. [Approved April 1, 1878.]

1977 1. No soldier shall wear or use, except when on military duty, or by special permission of his commanding officer, any uniform or other article of military property belonging to the State, or to the company of which he is a member.

2. No officer in charge of public property for military use shall transfer any portion thereof either as a loan or permanently, without the authority of the next superior commander.

3. Although an officer who has receipted for public property is personally and officially accountable therefor, yet all commanding officers are also responsible that the best arrangements are made for the security and safety of all public property within their commands, and for the strict observance of the regulations in regard to its care, removal, use, or issue. It is, therefore, their duty to see that none but faithful and reliable persons are employed for its care, or allowed control over or access to it.

4. No parade or voluntary service shall be performed by any regiment, battalion, or company, under arms, or in uniform, without the approval of the next superior authority. [In effect April 15, 1880.]

ARTICLE III.

REGIMENTS AND BATTALIONS.

§ 1982. Regiments and battalions of infantry.
§ 1983. Regiments of cavalry.
§ 1984. Field officers, number and designation.
§ 1985. Mode of election.
§ 1986. Returns of election.
§ 1987. Battalions of light artillery.
§ 1988. Officers and regulations for.
§ 1989. Drills of.
§ 1990. Staff of Colonel, Lieutenant Colonel, and Major
§ 1991. Chaplains. (Repealed.)
§ 1992. Drum or trumpet corps.
§ 1993. Bands.

1982. A regiment of the National Guard consists of not less than six nor more than ten companies. Any less number of companies than six constitute a battalion. [In effect April 15, 1880.]

1983. A regiment of cavalry consists of not less than eight nor more than twelve companies.

1984. The field officers of a regiment are one Colonel, one Lieutenant Colonel, and one Major. A cavalry regiment may have two Majors. The field officers of a battalion, when composed of less than six companies and more than three, are one Lieutenant Colonel and one Major. When composed of two or three companies, then one Major only. [In effect March 12, 1878.]

1985. Such officers are elected by the commissioned officers of the different companies comprising the regiment or battalion, and if the regiment or battalion is already formed, by all the commissioned officers thereof, excepting staff officers, and hold office for the term of four years. Upon application of the officers entitled to elect, the General of Brigade to which such regiment or battalion is attached, or to be attached, must appoint a suitable person to preside at the election, who must give notice of his appointment, of the time and place of holding the election, and of the office to be filled, which notice must be published at least ten days in some newspaper published within the limits of the brigade, or, if no paper is published within such limits, by posting notices in at least three conspicuous places. The brigade commander may order an election for field or line officers, if application is not made for an order for election within two months after the vacancy occurs, or after the expiration of the term for which the officer was last elected. [In effect March 12, 1878.]

1986. Such presiding officer must make return of the election held, through the proper military channels, for approval to the Adjutant General, who, upon finding the same in accordance with the provisions of law, orders, and regulations, must notify the Commander-in-Chief thereof for his consideration, who, if he approve, shall issue the commission. In all elections for commissioned officers, a majority of the votes of those present shall be necessary to a choice. [In effect April 15, 1880.]

1987. When two or more companies of light artillery are in the same brigade, they must be formed into a battalion and be commanded by a Major, if composed of two companies, and by a Lieutenant Colonel, if of three companies and less than six.

1988. In the election of officers, the appointment of non-commissioned officers, and rules of government and discipline, the provisions of this title for the government and dis-

cipline of the other arms of the National Guard, as far as applicable, govern battalions of light artillery.

1989. The provisions in this title contained relating to battalion drills do not apply to light artillery; but the commanding officer of a battalion of light artillery must personally drill each company of his command not less than three times in each year, one of which drills must be with harnessed battery.

1990. The staff of a Colonel of a regiment, and of a Lieutenant Colonel, or Major commanding a battalion, consists of one Adjutant, with the rank of Captain; one Quartermaster, one Commissary, one Paymaster, one Ordnance Officer, one Inspector of Rifle Practice, each with the rank of First Lieutenant; one Surgeon, with the rank of Major; one Chaplain, with the rank of Captain; one Sergeant Major, one Quartermaster Sergeant, one Commissary Sergeant, one Ordnance Sergeant, one Hospital Steward, and one Principal Musician, with rank of Sergeant Major; each and all of the herein named to be appointed by such commanding officer, to hold office at his pleasure, and until their successors are appointed and qualified. [In effect March 4, 1881.]

1991. Section one thousand nine hundred and ninety-one of said Code is hereby repealed. [In effect April 15, 1880.]

1992. Commanders of regiments and battalions may concentrate the music of their different commands and organize the same under a Drum Major or Chief Trumpeter, as a drum or trumpet corps. [In effect April 15, 1880.]

1993. When bands of music have not been organized for any regiment or battalion in the manner provided in the regulations of the army of the United States, such regiment or battalion, through its commanding officer, may hire the services of any band of musicians at their own expense; and the persons so employed are, during the term of their engagement, subject to the same laws and regulations that govern the military with which they may serve.

ARTICLE IV.

DIVISION AND BRIGADES.

§ 2003. Number of brigades.
§ 2004. The brigades compose one division.
§ 2005. New counties, how attached.
§ 2006. Staff of Major General.
§ 2007. Staff of Brigadier General.

2003. The National Guard of this State is organized into six brigades, each commanded by a Brigadier General, as follows:

First Brigade—San Diego, Los Angeles, San Bernardino, Santa Barbara, San Luis Obispo, and Monterey Counties.

Second Brigade—Santa Cruz, Santa Clara, San Mateo, San Francisco, Alameda, Contra Costa, Marin, Sonoma, Solano, Napa, and Lake Counties.

Third Brigade—San Joaquin, Mariposa, Tuolumne, Fresno, Stanislaus, Calaveras, Merced, Mono, Inyo, Kern, and Tulare Counties.

Fourth Brigade—Sacramento, Yolo, Sutter, El Dorado, Alpine, Amador, Placer, Nevada, Yuba, and Sierra Counties.

Fifth Brigade—Butte, Plumas, Lassen, Colusa, Tehama, Shasta, Trinity, and Siskiyou Counties.

Sixth Brigade—Mendocino, Humboldt, Del Norte, and Klamath Counties.

2004. The six brigades of the National Guard compose a division, commanded by a Major General.

2005. New counties hereafter organized must be attached to the respective brigade in which the larger portion of such new county is now located.

2006. The staff of the Major General consists of one Assistant Adjutant General, who shall be Chief of Staff, one Engineer Officer, one Ordnance Officer, one Quartermaster, one Commissary, one Inspector of Rifle Practice, one Paymaster, one Division Inspector, one Judge Advocate, and one Surgeon, with the rank of Lieutenant Colonel; two Aids-de-Camp, with the rank of Major, and four Staff Orderlies, with the rank of Sergeant Major, who are appointed by and hold office at the pleasure of the Major General, or until their successors are appointed and qualified. [In effect March 12, 1878.]

2007. The staff of each General of Brigade consists of one Assistant Adjutant General, who shall be Chief of Staff; one Engineer Officer, one Ordnance Officer, one Quartermaster, one Commissary, one Paymaster, one Brigade Inspector, one Judge Advocate, one Inspector of Rifle Practice, and one Surgeon, with the rank of Major; one Aid-de-Camp, with the rank of Captain, and two Staff Orderlies, with the rank of Sergeant Major, who are appointed by the Brigadier General and hold office at his pleasure, or until their successors are appointed and qualified. [In effect March 12, 1878.]

ARTICLE V.

PARADES AND DRILLS.

§ 2018. Parades, time of.
§ 2019. Public receptions and celebrations.
§ 2020. Companies parading with less than thirty-two members may be disbanded.
§ 2021. Exemptions from arrest.
§ 2022. Battalion drill, expenses. Cadets.
§ 2023. Companies failing to report may be disbanded.
§ 2024. Cavalry drills.
§ 2025. Drill of regiment not concentrated.
§ 2026. Company drills, time of.
§ 2027. Weekly company drills in certain cities.
§ 2028. Penalty for absence from company drills.
§ 2029. Book to be kept showing who was present at company drills.
§ 2030. Schools for instruction.

2018. The National Guard of California must parade at least twice in each year:

1. On the fourth day of July.

2. On the ninth day of September, which parade on said last named day shall be for target practice, under the supervision of the Inspector of Rifle Practice.

3. These parades shall be made by brigade, regiment, battalion, or company, as may be deemed most advisable by the Commander-in-Chief, who shall issue orders to the National Guard to carry out the provisions of this section. [In effect March 4, 1881.]

SUBDIVISION 3. Inspectors of rifle practice—Stats. 1878, p. 758.

2019. Upon receptions, or upon the celebration of any event of public importance, the commanding officer of the brigade may order out any portion of the National Guard under his command to join in such parade.

2020. Any company parading at any of the parades or drills in this article provided for, with a less number than thirty-two, rank and file, must be reported to the Adjutant General, and by him notified to the Commander-in-Chief, who in his discretion may disband the same.

2021. No person belonging to the military forces is subject to arrest, on civil process, while going to, remaining at, or returning from any place at which he may be required to attend for military duty. [In effect March 12, 1878.]

2022. Commanders of regiments and battalions must assemble their commands for battalion drills at least once in

each year, exclusive of the legal brigade, regimental, or battalion parade. Every such command, of not less than six companies, that annually assembles and encamps for discipline and drill, for not less than eight days, shall receive from the State, to defray the expenses of such encampment, the sum of two thousand dollars. If the companies of such command are not located at the same place, then each company shall, in addition to the above allowance, receive the sum of two dollars and fifty cents for every mile necessarily traveled to and from the place of assembly. Said sums shall be audited, allowed, and paid as other allowances to the National Guard are allowed and paid. Each Colonel commanding a regiment may muster into and attach to it a company of cadets, and may prescribe the ages and term of enlistment and the discipline thereof. Each member of such company must, between the age of eighteen and twenty-one, join some company of the National Guard, and serve therein not less than one term of enlistment. It shall be the duty of the Colonel to give his personal attention to the instruction of such cadet company; and he must, by rule, prohibit the use of intoxicating drinks by any member of such company during the term of membership, and must punish a second violation of such rule, by any one person, by dishonorable dismissal from the service. Every such company shall be trained in the arm of the service to which the regiment is attached, and shall receive from the State a monthly and annual allowance equal to one-third of the allowance made to a company of such regiment. [In effect April 15, 1880.]

2023. Any company failing to report for duty at such assemblage must be reported to the Adjutant General, who must notify the same to the Commander-in-Chief, who may in his discretion disband it.

2024. Cavalry must drill, mounted, at least twice in each year.

2025. When regiments are not concentrated, a portion of the companies may be assembled for battalion drill.

2026. Each company must assemble at least once a month for drill or military instruction.

2027. The companies located in the City and County of San Francisco, and in Sacramento, Oakland, Vallejo, San Jose, and Los Angeles, must assemble once a week for drill. [In effect March 12, 1878.]

2028. All officers or members of the National Guard who

absent themselves from three consecutive assemblages, without an excuse acceptable to the commanding officer, are debarred from the privileges and exemptions provided for members of the National Guard; and all non-commissioned officers or privates shall be reported by their commanding officer to the commanding officer of the regiment, or battalion, or unattached company, who shall forthwith Court-martial such non-commissioned officer or private, and, upon conviction by such Court-martial, the delinquent shall be dishonorably discharged from the service, and fined not less than five dollars nor more than fifty dollars. The proceedings of such Court shall be subject to approval and review, as in other cases. [In effect March 4, 1881.]

Delinquencies touching parades or encampments—how punished, Penal Code, §§ 652, 653.

2029. Commanders of companies must keep a book, in which must be entered the names and number of officers, non-commissioned officers, and privates, respectively, present at each drill, and must therefrom make monthly returns to the commanding officer of the regiment or battalion, and if unattached, to the brigade commander, the excuses of absentees recorded, and marked approved or otherwise. These books must be carefully preserved, and, when filled, forwarded to the Adjutant General's office. [In effect March 12, 1878.]

2030. The commanding officer of any brigade, regiment, or battalion, may require the officers thereof to meet for military instruction at such times and places as he may fix, and may also prescribe the mode and manner of instruction, and the rules and regulations to govern such meetings.

CHAPTER III.

Calling and Drafting the Militia into Actual Service.

§ 2039. Militia, when and by whom it may be called into actual service.
§ 2040. Same.
§ 2041. Call, how made.
§ 2042. Duty of officer to whom order is directed.
§ 2043. Same.
§ 2044. Same.
§ 2045. Organization of companies, etc., and election of officers.
§ 2046. Proclamation for election.
§ 2047. Commander-in-Chief may assign volunteers to companies or battalions already in active service.
§ 2048. Organization and command of troops from different brigades.
§ 2049. When draft may be ordered.
§ 2050. Who to superintend draft.
§ 2051. Persons drafted to rendezvous.
§ 2052. Election of officers.
§ 2053. Refusing to rendezvous, penalty for.
§ 2054. Companies, how attached.
§ 2055. Drafted men may be enrolled in existing companies.
§ 2056. Substitutes.
§ 2057. Same.
§ 2058. Same.
§ 2059. Rules governing conduct of troops when called out to suppress insurrection, etc.
§ 2060. Duration of commissions of officers called into actual service.
§ 2061. Vacancies occurring in actual service, how filled.
§ 2062. Same.
§ 2063. Same, for personal bravery in battle, etc.
§ 2064. Rules to govern militia when in actual service.
§ 2065. Pay of officers and privates when in actual service.
§ 2066. Pay of officers when detailed on special duty.

2039. In case of war, insurrection, or rebellion, or of resistance to the execution of the laws of this State, or upon the call or requisition of the President of the United States, or upon the call of any officer of the United States army commanding a division, department, or district in California, or upon the call of any United States Marshal in California, or of the chief executive officer of any city, or of any Sheriff, the Commander-in-Chief is authorized to call into active service any portion of the National Guard or enrolled militia.

Governor may call out military—Const. Cal., art. 8, § 1.

Resistance to execution of State laws—military force to suppress. Penal Code, §§ 725, 728-733.

2040. In case of the absence of the Commander-in-Chief from the Capital, or if it is impossible to immediately communicate with him, the civil or military officer making the requisition for troops may, if he deem the danger imminent and not admitting of delay, serve a copy of such requisition, together with a statement of the Governor's absence or the impossibility of immediately communicating with him, upon the Major General, or, in his absence, upon the General of the Brigade, who is authorized to exercise, with respect to calling out the troops of his division or brigade, the powers conferred in this section upon the Governor; but if the call is disapproved by the Governor, the troops so called into service must be immediately disbanded.

2041. Such call must be made by an order issued and directed to the commanding officer of the company, battalion, regiment, brigade, or division, which is called into service, designating the particular troops called, the time and place of rendezvous, and the officer to whom they must report.

2042. If such order is directed to the Major General of Division, it must be immediately communicated to the Brigadier Generals, and by them to all the officers of their respective brigades.

2043. Every officer receiving such order must rendezvous and report for duty as herein directed; and every officer commanding an organized company or battalion of the National Guard, on receiving such order, must immediately proceed to notify the same to each individual of his command, by personal notice or by publication in some newspaper, or by the posting in public places of the county or counties from which the call is made.

2044. Such officer must attend in person, or by deputing an officer of the organized militia in his place, at the place of rendezvous, and take the names of all volunteers for service under such call.

2045. If the number of such volunteers is sufficient to form one or more companies or battalions, he must immediately call and superintend the election of the officers of such companies or battalions.

2046. A proclamation of the call of such election, made by the officer calling it, at the place of rendezvous, is a sufficient notice.

2047. The Commander-in-Chief has authority, if he deem it expedient, to direct that a portion of the volunteers so presenting themselves be assigned to companies or battalions already in active service, whose numbers are less than the full complement.

2048. Where troops are called into active service from different brigades, and the number so called are not more than sufficient to constitute one complete brigade, the Commander-in-Chief must so organize them, and must designate the particular Brigadier General to command it.

2049. If the number of volunteers presenting themselves at the place of rendezvous is insufficient to satisfy the call of the Commander-in-Chief, the Brigadier General of the brigade in which such call is made must promptly proceed to draft from the enrolled militia of his brigade a sufficient number of men to satisfy the call; and this draft must be made by putting the names of all the enrolled militia of the county or counties from which the order directs the forces to be raised into a box, and drawing therefrom a sufficient number of names to satisfy the call.

2050. The Major General must be present and superintend the drafting of the enrolled militia under any call by the Commander-in-Chief; but his presence is not necessary to give validity to the proceedings. In case of the absence or inability of the Brigadier General, the officer next in rank of the brigade, or, in default of any officer of that brigade for duty, the Major General, or, in his default, the Commander-in-Chief must designate some other officer to perform that duty.

2051. The persons drafted must be summoned by some officer appointed for that purpose by the Brigadier General, in the manner prescribed by law for the summoning of witnesses in civil cases, the time and place of rendezvous, as ordered by the Brigadier General, being stated in the summons.

2052. As soon as a sufficient number of drafted men have appeared at the rendezvous to form a company or companies, they must proceed to the election of their company officers.

2053. Any member of the national Guard who neglects or refuses to rendezvous when ordered out by the Commander-in-Chief, is guilty of disobedience of orders, and may be tried and punished by a Court-martial; and any member of the enrolled militia who refuses or neglects to rendezvous when drafted, is subject to a penalty of not less than fifty nor more than three hundred dollars, to be recovered by an action

brought by the District Attorney, in the name of the people of the State, upon the certificate of the officer appointed to make the draft, before any Court of competent jurisdiction in the county from which such person was drafted, and the fine recovered must be paid into the State Treasury to the credit of the General Fund.

2054. Any company of the enrolled militia drafted and organized, may, by direction of the Commander-in-Chief, be enrolled and mustered into any battalion of the National Guard having less than eight companies.

2055. Drafted men of the enrolled militia not organized into companies, may, at the discretion of the Commander-in-Chief, be enrolled and mustered into any existing company of the National Guard or enrolled militia not having the full number authorized by law, and which has already been called into active service.

2056. Any person called or drafted into service may furnish as a substitute any person fit for military duty who has not been called or drafted into service.

2057. When any person drafted for service offers, at or after the time of rendezvous, a suitable substitute, and such substitute consents in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would have been subject had he personally served, he must be accepted by the officer making such draft.

2058. The person whose substitute is so accepted is not subject to draft during the term of service of the substitute.

2059. The conduct of troops when called out to suppress an insurrection or rebellion, to disperse a mob, or enforce the laws, is provided for in Section 731 of the Penal Code.

2060. The commission of any officer called into active service continues until he is discharged by the order of the Commander-in-Chief.

2061. All vacancies of officers and non-commissioned officers in active service must be filled by appointment or promotion; the first by the Commander-in-Chief, and the second by the commanding officer of the battalion or of the company, in case such company forms no part of any battalion.

2062. In filling vacancies of commissioned officers the Commander-in-Chier must, as a general rule, promote by

seniority, or appoint on the recommendation of their superior officers those in active service; and in any case of departure from this rule, the Commander-in-Chief must report his reasons for such departure to the Senate.

2063. The commanding officer of troops in active service may nominate to any vacancy for personal bravery or service in siege or battle, and if the Governor commission some other person than the one so nominated, he must report his reasons to the Senate; and if the Senate in either of the foregoing cases disapprove of the reasons given, the commission so given is vacated, and the Governor must immediately proceed, with the advice and consent of the Senate, to fill such vacancy.

2064. The rules and regulations established by Congress for the government of the army of the United States are applicable to and govern the militia of this State when in active service.

2065. Officers and privates, while on active duty in the service of the State, receive the same pay as the officers and privates of the United States army of similar grade serving on the Pacific Coast; the same to be audited by the Board of Military Auditors, upon the pay roll properly made up and signed by such officer.

2066. When an officer is detailed for special duty in any matter relating to the National Guard, or care of State military property, by order of the Commander-in-Chief, he must be allowed pay proper, and such reasonable traveling expenses as the Board of Military Auditors may allow, upon sworn vouchers showing actual expenditures.

CHAPTER IV.

Courts Martial and of Inquiry.

§ 2076. Who may appoint Courts martial.
§ 2077. Organization and rules.
§ 2078. Powers.
§ 2079. Revision and approval of sentence.
§ 2080. Fines, how collected.
§ 2081. No action in certain cases against members of Courts martial.
§ 2082. Who may order Courts of inquiry.
§ 2083. Rules governing.
§ 2084. Sheriffs and Constables must serve subpœnas, etc.
§ 2085. Penalty for disobedience.
§ 2086. Penalty for refusing to pay over moneys.
§ 2087. Fines and penalties, various offenses.

2076. The following officers may appoint Courts martial:

1. The Commander-in-Chief, for the trial of general officers, and all officers of the staff of the Commander-in-Chief.

2. The Major General, for the trial of all staff officers of the division and brigades, and for the field officers of battalions and regiments.

3. Brigadier Generals, for the trial of officers and soldiers in their respective brigades.

4. Commanding officers of regiments and battalions, for the trial of all enlisted men of their respective commands. Commanding officers of batteries or of unattached companies, for the trial of all enlisted men of their respective commands. For the trial of enlisted men, the commanding officer of each brigade, regiment, battalion, or unattached company, may, at any time, appoint a Regimental, Battalion, or Company Court martial, to consist of one officer whose rank is not below that of Captain, or in an unattached company, that of First Lieutenant.

5. The officer appointing said Court shall fix the day on which it shall convene, and, when convened, the Court may adjourn from time to time as shall become necessary for the transaction of business; but the whole session of the Court, from the day on which it shall convene until its dissolution, shall not exceed three weeks, and in case any vacancy shall happen in the Court, or a new Court shall be required, the officer ordering the Court, or his successor in command, may fill such vacancy or order a new Court.

6. The officer constituting such Court shall, before he enters on his duties as such, take the following oath: "I, ——, do swear (or affirm) that I will well and truly try and determine, according to evidence, all matters between the people of the State of California and any person or persons who may come before the Regimental (or Battalion) Court-martial to which I have been appointed;" and such oath shall be taken by him before a Justice of the Peace of the county in which he resides, or a field officer of his regiment or battalion, and it shall be the duty of such Justice of the Peace or field officer to administer the oath without fee or reward.

7. Such Court shall direct a non-commissioned officer, or other fit person or persons to be by him designated, to summon all delinquents and parties accused to appear before the Court at a time and place to be by him appointed, which service shall be personal or by leaving such summons at the residence of such delinquents and parties accused.

8. Such non-commissioned officer, or other person or persons so designated, shall make the like returns, and with like effect as commissioned and non-commissioned officers are authorized and required to make in cases of warning to a company or regimental parade, and shall be subject to the like penalties for neglect of duty.

9. The Court, when organized, shall have the trial of all offenses, delinquencies, and deficiencies that occur in the regiment or battalion for which it shall have been appointed, and also of any that occur in the separate troops or batteries attached to the same brigade; and the said Court shall have power to impose and direct to be levied all the fines or penalties to which enlisted men are declared to be subject by the provisions of this chapter.

10. The proceedings and sentence of any such Court shall, without delay, be delivered to the officer ordering the Court, who shall approve or disapprove of the same within fifteen days thereafter, and shall give notice of his approval or disapproval to the President thereof; and from the sentence of any such Court imposing a fine or penalty for any offense, delinquency, or deficiency, an appeal, if made within twenty days after the fine or penalty was made known to the person fined, shall be allowed to the officer ordering the Court, or to his successor in command, and he may remit or mitigate such penalty or fine. [In effect March 12, 1878.]

2077. Courts martial appointed under the provisions of this chapter are organized in like manner, and subject to the rules and regulations governing Courts martial in the United States army, so far as the same may be applicable and not inconsistent with the laws of this State, and the rules and regu-

lations and forms established by the Commander-in-Chief. They have the same power to compel the attendance of witnesses when summoned by them, to preserve order in and about the Court room during sessions, and to punish for contempt, as the Judges of the Superior Court have under the the laws of this State. [In effect April 15, 1880.]

2078. Courts martial have power on conviction to punish by depriving officers of rank by expulsion or dismissal, or by such other and usual military fines and penalties as is customary with Courts martial in the army of the United States.

2079. The officer appointing a Court martial must revise the proceedings and approve or disapprove the sentence of such Court martial, and must direct the execution of such sentence, or mitigate the punishment, or may remit the sentence of the person convicted; but the person so sentenced may apply to the Commander-in-Chief to revise the proceedings and to disapprove them or pardon the offense, in which case the officer approving the sentence will transmit the proceedings in the case to the Commander-in-Chief, and the execution of the sentence must be suspended until the proceedings are returned with the decision thereon.

2080. For the purpose of collecting fines or penalties imposed by Courts martial, the President of any such Court must make a list of all such fines and penalties, and of the persons against whom they have been imposed, and must, within fifteen days after the fines and penalties have been imposed, issue a warrant under his hand, directed to any Sheriff or Constable of the county, commanding him to levy and collect such fines, together with costs, upon and out of any property of the person against whom the fine or penalty was imposed, and such warrant may be executed and renewed in the same manner as executions issued from Justices' Courts are executed and renewed. All property, except the homestead, is subject to execution and forced sale under such warrant.

2081. No action can be maintained against any member of a Court martial, or officer, or agent acting under his authority, on account of an imposition of a fine, or the execution of a sentence, on a person not liable to military duty, if such person has been summoned and notified in writing of the charges preferred against him, and has failed to appear and show his exemption before the Court.

2082. Courts of inquiry may be ordered by the Commander-in-chief, by the Major General, or by any Brigadier General.

2083. Courts of inquiry are governed by the same rules as similar Courts in the army of the United States.

2084. Every Sheriff and Constable must serve all orders, subpœnas, or process delivered to him for that purpose by any member of a Court-martial.

2085. In time of peace every commissioned officer, for disobedience of orders, neglect, or ignorance of duty, unofficerlike conduct, or disrespect to a superior officer, or for neglecting to comply with any of the requirements of this chapter, shall be arrested and brought to trial before a Court martial, which may, on conviction, sentence him to be cashiered, incapacitated from holding any military commission, fined to an amount not exceeding one hundred dollars, or reprimanded, or may sentence him to all or either of such fines and penalties, in their discretion. [In effect March 12, 1878.]

2086. Every commissioned officer refusing to pay over moneys in his hands, which came into his possession by virtue of his position as an officer of the National Guard, shall be liable to be tried and cashiered, or otherwise punished therefor, by a Court-martial. [In effect March 12, 1878.]

2087. Every commissioned officer, and every enlisted man shall, on due conviction, be subject for the following offenses to the fines and penalties thereto annexed:

1. Every commissioned officer, for non-attendance at any parade or encampment, and every such officer or enlisted man neglecting or refusing to obey the orders of his superior officers on any day of parade or encampment, or to perform such military duty or exercise as may be required, or departing from his colors, post, or guard, or leaving his place or ranks without permission, a fine not more than one hundred nor less than five dollars.

2. Every enlisted man, for non-appearance when duly warned or summoned at a troop, battery or company drill or parade, a fine of two dollars for each offense, and in case of a troop parading mounted, a fine of six dollars for each officer; at a regimental or battalion parade, not less than three nor more than six dollars for each offense, and at a place of rendezvous, when called into actual service in case of war, insurrection, or invasion, or imminent danger thereof, a sum not exceeding twelve months' pay nor less than one month's pay; and for disobedience of orders or disrespectful or insubordinate conduct, a fine not exceeding fifty dollars; and also in the discretion of the Court, the offender shall be liable to dishonorable discharge from the command to which he belongs.

3. Every commissioned officer, or non-commissioned officer, for neglecting or refusing to obey any order or warrant to him lawfully given or directed, or to make a proper return, or neglecting or refusing, when required, to summon a delinquent before a Court martial, or duly to return such summons, a fine of not more than one hundred nor less than five dollars. [In effect March 12, 1878.]

CHAPTER V.

The Board of Military Auditors.

§ 2093. Who constitute the Board
§ 2094. Allowance and payment of company expenses.
§ 2095. Same.
§ 2096. Other duties of the Board.
§ 2097. Duties of Controller and Treasurer.
§ 2098. Claims exempted from Board of Examiners.
§ 2099. Allowances to companies.
§ 2100. Military property of State.

2093. The Commander-in-Chief, Adjutant General, and the Attorney General constitute a Board of Military Auditors. The Commander-in-Chief is President, and the Adjutant General Secretary; and the Board must have a seal, which must be attached to all accounts audited by them.

2094. There must be audited and allowed by the Board of Military Auditors, and paid out of the appropriations for military purposes, upon the warrant of the State Controller, to the commanding officer of each infantry or cavalry company of the National Guard, the sum of one hundred dollars per month; and to the commanding officer of each artillery company, or Gatling battery company, the sum of one hundred and twenty-five dollars per month, and the additional sum of twenty-five dollars per month for each gun over one; the sums so paid to be used for armory rent, care of arms, and proper incidental expenses of the company. There must also be audited, allowed, and paid out of the same appropriation, to the commanding officer of each regiment or battalion, the sum of five dollars per month for each company in his command, for clerical expenses; and if the regiment or battalion has more than four companies, and has attached to it an organized and uniformed band of not less than twelve pieces, the additional sum of twenty-five dollars per month for such band; to each Brigadier General, five dollars per month for each company in his command; and to the Major General, six hundred dollars per annum; and to each company, a sum necessary for uniforms and to keep the same in repair, not to exceed one hundred and fifty dollars per annum; and to each company the amount necessarily expended for ammunition. [In effect April 15, 1880.]

The Secretary of State shall make no charge for issuing a military commission. [April 15, 1880.]

2095. No claim must be allowed under the provisions of the preceding section, unless an account of the expenditures for the preceding year, and ending June thirtieth, is made upon the annual muster roll, certified to by the commanding officer as correct. The demands must be made quarterly in duplicate, signed and sworn to by the officer claiming the same, before any field officer of the National Guard or Notary Public, and transmitted through the regular military channels, with the approval of each commanding officer through whose headquarters they are required to pass. One copy of such demands shall be filed in the office of the Adjutant General, and one copy sent to the Board of Military Auditors. [In effect April 15, 1880.]

2096. The Board of Military Auditors must audit and allow all proper claims against the Military Fund incurred by troops in the service of this State, and officers attached to the same.

2097. The Controller of State must draw his warrants for any amount audited and allowed by the Board, and the Treasurer of State must pay the same out of the appropriation for military purposes. [In effect March 12, 1878.]

2098. Claims audited and allowed by the Board of Military Auditors are exempt from the provisions of Article XVIII of Chapter III, Part III of this Code.

Exempt from the provisions—of § 654 *et seq.*

2099. The annual sum of two hundred and fifty dollars must be audited by the Board, and paid out of the appropriation for military purposes, to each company of the National Guard of sixty members or over, and an amount in proportion to every company of less than sixty members. The amount so audited and allowed must be paid to the commanding officers of such companies, for the use thereof. An itemized statement of the manner in which sums have been expended must be made by such officers to the Adjutant General on the thirtieth day of June in each year, together with a verified statement of the manner in which all moneys received by him from the State have been expended. [In effect April 15, 1880.]

2100. All military property paid for out of moneys allowed by the State shall be held to be the property of the State, and must be enumerated in the annual muster roll next following its purchase. [In effect March 12, 1878.]

CHAPTER VI.

Adjutant General.

§ 2107. General duties of Adjutant General.
§ 2108. Report of.
§ 2109. To act as Chief of Staff.
§ 2110. Staff of.
§ 2111. Transportation of arms.
§ 2112. Salary of Armorer. (Repealed.)
§ 2113. Salary of Adjutant General.
§ 2114. Salary of Assistant Adjutant General.
§ 2115. Salaries, when and out of what fund payable.
§ 2116. Official bond.
§ 2117. Title in force, etc.

2107. It is the duty of the Adjutant General:

1. To keep and preserve the arms, accoutrements, ammunition, and other military property belonging to the State;

2. To keep on file in his office all returns and reports made to him;

3. To keep an account, in a manner directed by the Commander-in-Chief, of all moneys received or disbursed by him;

4. To prepare and keep all blank forms required for the service;

5. To attest all commissions issued to military officers;

6. To authenticate with his official seal all papers issued from his office;

7. To make out and transmit the annual militia returns prescribed by the Act of Congress of March second, eighteen hundred and three;

9. To perform such other duties as are required by the provisions of this Title. [In effect January 20, 1876.]

4. To cause so much of the militia laws as shall be in force to be printed and bound in proper form, and distributed, one copy to each commissioned officer, Supervisors' Clerk, and County Assessor in the State, and also to prepare and cause to be furnished to the National Guard, at the expense of the State, all necessary blank books, blank forms, and notices to carry into full effect the provisions of this section; and the Controller is hereby directed to draw his warrant on the Treasurer of the State for the expenses incurred under this section, after having the approval of the Board of Military Auditors. [In effect March 12, 1878.]

Apparent Amendment of 1878—above given, attempts to amend portion of section, without renacting whole section and publishing it at length (see § 325*n*), hence validity of change is doubtful.

2108. He must report to the Governor a statement:
1. Of all moneys received or disbursed by him since his preceding report;
2. An account of all arms, accoutrements, ammunition, and military property belonging to the State, from what source received, and to whom issued;
3. Of the present condition of all such property under his charge;
4. The number and condition of the National Guard and of the enrolled militia of the State.

2109. He is ex officio Chief of Staff, Quartermaster General, Commissary General, Inspector General, and Chief of Ordnance.

2110. There shall be an assistant Adjutant General of California, who shall rank as Colonel on the Staff of the Governor and Commander-in-Chief. He shall be appointed by the Adjutant General, and hold office at his pleasure. [In effect March 4, 1881.]

2111. The transportation of arms, equipments, and military stores issued to troops, or received by the State, and all other military transportation, must be contracted for by the Adjutant General, under the direction of the Commander-in-Chief, and vouchers for such transportation, when audited by the State Board of Military Auditors, must be paid from the appropriation for Military purposes, on the warrant of the Controller. [In effect March 12, 1878.]

2112. Section two thousand one hundred and twelve of the Political Code is hereby repealed. [In effect January 20, 1876.]

2113. The annual salary of the Adjutant General is three thousand dollars.

2114. The annual salary of the Assistant Adjutant General is one thousand eight hundred dollars. [Approved April 1, 1878; in effect December 1, 1879.]

2115. The salaries provided for in this Chapter are payable monthly out of the General Fund in the State Treasury.

2116. The Adjutant General must execute an official bond in the sum of twenty-five thousand dollars.

Official bonds—§§ 947-986.

2117. The provisions of this Title shall be in force and effect from and after the first day of May, eighteen hundred and seventy-two. The Adjutant General is hereby directed to have prepared and printed for the use of the National Guard of the State, whenever in his judgment it may be deemed necessary, the laws and regulations authorized by section one thousand nine hundred and forty-one of the Political Code. After distributing a sufficient number to the officers of the National Guard, the remaining copies may be sold to members of companies and regiments, and to all others who may desire to purchase the same. The price of copies sold shall not exceed one dollar. The money thus received shall be paid by the Adjutant General into the State Treasury at the end of each month. The moneys thus received by the State Treasury shall be placed to the credit of the General Fund. The number of copies authorized by this Section shall not exceed three thousand (3000) in any one year. [In effect March 4, 1881.]

TITLE V.

Public Institutions.

CHAPTER I. INSANE ASYLUM.
II. DEAF, DUMB, AND BLIND ASYLUM.
III. STATE LIBRARY.
IV. SUPREME COURT LIBRARY.
V. OTHER PUBLIC INSTITUTIONS.

CHAPTER I.

Insane Asylums.

ARTICLE I. BOARD OF DIRECTORS.
II. MEDICAL SUPERINTENDENT.
III. ASSISTANT PHYSICIANS.
IV. TREASURER.
V. GENERAL PROVISIONS.
VI. EXAMINATION AND COMMITTAL OF INSANE PERSONS.

ARTICLE I.

THE BOARD OF DIRECTORS OF THE INSANE ASYLUM.

§ 2136. Under control of Board of Directors.
§ 2137. Powers and duties of Board.
§ 2138. Moneys for support of Asylum, how drawn.
§ 2139. Board must contract for supplies.
§ 2140. Compensation of Directors.

2136. The Insane Asylum, located at Stockton, is under the management and control of a Board of Directors, consisting of five persons, appointed and holding their offices as provided in Title I, Part III, of this Code.

Board of Directors—appointment and term of office, §§ 368, subd. 2, and 369; same, of Trustees under former statute, 6 Cal. 509; vacancy under former statute, 37 Cal. 639.

Appropriation for building—Stats. 1880, p. 234 or 61.

Napa Asylum—establishment, Stats. 1872, p. 673; no intoxicating liquors to be sold in vicinity, Stats. 1874, p. 27; provision for completion of, Stats. 1874, p. 565; management of, Stats. 1876, p. 133; appropriations, Stats. 1876, pp. 804, 851; water supply, Stats. 1876, p. 883. Purchase of additional grounds for, Stats. 1881, p. 90.

2137. The powers and duties of the Board of Directors of the Insane Asylum are as follows:

1. To make by-laws, not inconsistent with the laws of this State, for their own government and the government of the Asylum;

2. To hold stated meetings at the Asylum for the transaction of business, on the first Monday in each month;

3. To keep a record of their proceedings, open at all times to the inspection of any citizen;

4. To elect a Medical Superintendent, two Assistant Physicians, and a Treasurer;

5. To provide on the Asylum grounds suitable apartments, furniture, provisions, and lights for the Medical Superintendent, Assistant Physicians, and their families;

6. To make diligent inquiry into the departments of labor and expense, the condition of the Asylum and its property.

7. To report to the Governor a statement of the receipts and expenditures, the condition of the Asylum, the number of patients under treatment, and of such other matters touching the duties of the Board as is advisable.

SUBDIVISION 4. Medical Superintendent—§§ 2150-2155. Assistant Physicians, §§ 2165-2169. Treasurer, §§ 2179-2183.

2138. If the Board approve the estimates made under the provisions of Section 2153, it must notify the Controller of State, who must draw his warrant for the amount estimated in three equal sums out of any moneys in the State Treasury appropriated for the use of the Asylum.

2139. Upon the receipt of each report provided for in Subdivision 5 of Section 2152, the Board of Directors must advertise for contracts for furnishing the supplies therein specified, for three successive weeks, in one newspaper in each of the cities of Stockton, Sacramento, and San Francisco. The contract must be awarded to the lowest bidder, upon his giving satisfactory security for the faithful performance of the same.

2140. The Directors shall not be directly or indirectly interested in any contract or contracts for supplies furnished said Asylum, but shall receive, as their compensation, the sum of ten dollars per day for their services in attending monthly or called meetings of said Board, and such mileage

as is provided by law for members of the Legislature of this State, payable out of any moneys set apart by law for the use and benefit of said Asylum, as other bills and accounts against the Asylum are paid; *provided*, the amount so received as per diem compensation for services shall not exceed the sum of one hundred and forty dollars per year to each Director. [In effect April 1, 1878.]

Mileage of members of Legislature—§ 266.

ARTICLE II.

MEDICAL SUPERINTENDENT.

§ 2150. Qualifications of.
§ 2151. Term of office.
§ 2152. General powers and duties.
§ 2153. Must estimate expenses and report to Directors.
§ 2154. Salary.
§ 2155. Bond.

2150. The Medical Superintendent must be a graduate in medicine, and must have practiced his profession five years after the date of his diploma.

2151. His term of office is four years from and after his election.

Superintendent's term of office—vacancy under former statute discussed, 6 Cal. 289; 8 Cal. 1

2152. He is the chief executive officer of the Asylum, with powers and duties as follows:

1. To control the patients, prescribe the treatment, and prescribe and enforce the sanitary regulations of the Asylum;
2. With the consent of the Board of Directors, to fix the number and compensation of, and appoint, control, and remove the attendants and assistants;
3. To prescribe and enforce the performance of the duties of the attendants and assistants;
4. To prescribe and enforce the performance of the duties of the Assistant Physicians;
5. To ascertain and report to the Board of Directors the amount, character, and quality of provisions, fuel, and clothing required for the six months ending on the first of May and November in each year;
6. With the consent of the Board of Directors, to make any expenditure necessary in the performance of his duties, except for provisions, fuel, and clothing;
7. To receive and pay to the Treasurer all moneys found upon insane persons;

8. To keep a daily record of his official acts, in the mode prescribed by the by-laws;

9. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible to report a statement thereof, and of the general condition of the Asylum, to the Board of Directors.

Meetings of Superintendents—of American Institutions for the Insane: Superintendent of Stockton Asylum, or one of his assistants, may attend, and have his expenses paid, alternately with Resident Physician of Napa Asylum, or one of his assistants, Stats. 1878, p. 767.

2153. He must estimate, quarterly in advance, the probable expenses of the Asylum, and submit such estimate to the Directors, at their stated meetings, for their consideration and approval.

2154. The annual salary of the Medical Superintendent is thirty-five hundred dollars.

2155. He must execute an official bond in the sum of twenty thousand dollars.

Official bonds—§§ 947-986.

ARTICLE III.

ASSISTANT PHYSICIANS.

§ 2165. Qualifications.
§ 2166. Term of office.
§ 2167. General duties.
§ 2168. Senior Assistant, as Medical Superintendent.
§ 2169. Salaries.

2165. The Assistant Physicians must be graduates in medicine.

2166. Their term of office is four years from and after their appointment.

2167. They must perform the duties and exercise the powers prescribed by the Medical Superintendent or the by-laws.

2168. During the absence or disability of the Medical Superintendent, the Assistant longest in commission must perform his duties and exercise his powers.

2169. The annual salary of each Assistant Physician is twenty-five hundred dollars.

ARTICLE IV.

TREASURER.

§ 2179. Member of Board not eligible.
§ 2180. Tenure of office.
§ 2181. General duties of.
§ 2182. Salary
§ 2183. Bond.

2179. No member of the Board of Directors is eligible to the office of Treasurer.

2180. The Treasurer holds his office at the pleasure of the Board of Directors.

2181. It is the duty of the Treasurer:

1. To act as Secretary of the Board of Directors;
2. To keep the accounts of the Board, and of the receipts and expenditures;
3. To report on the first Monday in each month to the State Board of Examiners a statement under oath of the expenses of the preceding month;
4. To perform such other duties as may be required of him by the by-laws or Board of Directors.

2182. The annual salary of the Treasurer is six hundred dollars.

2183. He must execute an official bond in the sum of twenty thousand dollars.

Official bonds—§§ 947-986.

ARTICLE V.

GENERAL PROVISIONS.

§ 2193. Salaries, when and out of what fund payable
§ 2194. Approval and filing of official bonds.
§ 2195. Restrictions upon residence of physicians.
§ 2196. Restrictions upon business of physicians.
§ 2197. Discharge of patients on recovery.
§ 2198. Insane convicts, reception and return of.
§ 2199. Restrictions upon admission of non-residents.
§ 2200. Disposition of moneys unexpended at discharge.

2193. The salaries and compensation fixed by the provisions of this chapter must be paid monthly out of the moneys appropriated for the support of the Asylum.

2194. The official bonds required by the provisions of this chapter must be approved by the Board of Directors, and filed and recorded in the office of the Secretary of State.

Official bonds—§ 947 *et seq.*

2195. The Medical Superintendent and each Assistant Physician must reside on the Asylum grounds.

2196. The officers mentioned in the preceding section must not engage in the private practice of medicine, but must devote their whole time to the performance of their duties, unless granted leave of absence by the Board of Directors.

2197. Insane persons received in the Asylum must upon recovery be discharged therefrom.

2198. Insane convicts must be received into the Insane Asylum, and returned to the State Prison again, as provided in Section 1230 of the Penal Code.

2199. No insane person, non-resident of this State, must be received into the Asylum unless he became insane within this State.

2200. If at the time of the discharge of a person from the Asylum, or after the death and burial of any person therein confined, there remains in the custody of the Directors or Treasurer any moneys paid for the support or maintenance of such person, it must, upon demand, be repaid.

ARTICLE VI.

EXAMINATION AND COMMITTAL OF INSANE PERSONS.

§ 2210. Examination, before whom.
§ 2211. Two witnesses.
§ 2212. Two physicians.
§ 2213. Witnesses, duty of.
§ 2214. Physicians, duty of.
§ 2215. Certificate of physicians.
§ 2216. To be made on forms, etc.
§ 2217. Action of Judge. Commitment.
§ 2218. Delivery of insane person at Asylum.
§ 2219. Money found on insane person.
§ 2220. Idiots, imbeciles, etc., not to be admitted.
§ 2221. Compensation for delivery of insane to Asylum.
§ 2222. Fees of physicians.

2210. Whenever it appears by affidavit to the satisfaction of a magistrate of the county that any person within the county is so far disordered in his mind as to endanger health,

person, or property, he must issue and deliver to some peace officer for service a warrant, directing that such person be arrested and taken before any Judge of a Court of record within the county for examination.

2211. When the person is taken before the Judge he must issue subpœnas to two or more witnesses, best acquainted with such insane person, to appear and testify before him at such examination.

2212. The Judge must also issue subpœnas for at least two graduates of medicine to appear and attend such examination.

2213. At the examination the persons subpœnaed must appear and answer all questions pertinent to the matter under investigation.

2214. The physicians must hear such testimony, and must make a personal examination of the alleged insane person.

2215. The physicians, after hearing the testimony and making the examination, must, if they believe such person to be dangerously insane, make a certificate, under their hand, showing as near as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property;
2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease;
3. The nativity, age, residence, occupation, and previous habits of the person;
4. The place from whence the person came, and the length of his residence in this State.

2216. The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the Medical Superintendent of the Asylum.

2217. The Judge, after such examination and certificate made, if he believes the person so far disordered in his mind as to endanger health, person, or property, must make an order that he be confined in the Insane Asylum. A copy of such order shall be filed with and recorded by the County Clerk of the county. The Clerk shall also keep, in convenient form, an index book, showing the name, age, and sex of each person so ordered to be confined in the Insane Asylum, with the date of the order, and the name of the Insane Asylum in which the person is ordered to be confined. No fees shall be charged

by the Clerk for performing any of the duties provided for by this section. [In effect February 18, 1881.]

2218. The insane person, together with the order of the Judge and certificate of the physicians, must be delivered to the Sheriff of the county, and by him must be delivered to the officer in charge of the Insane Asylum.

2219. Any moneys found on the person of an insane person at the time of arrest must be certified to by the Judge and sent with such person to the Asylum, there to be delivered to the Medical Superintendent, who must deliver the same to the Treasurer. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of such person while in the Asylum; if the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the Asylum.

2220. No case of idiocy or imbecility, or simple feebleness of mind, must be maintained at, nor must any case of delirium tremens be admitted into the Asylum.

2221. Persons delivering insane persons at the Asylums must receive all expenses necessarily incurred in their transportation, and also a just and reasonable compensation for their own services, the amount of the expenses and compensation in each case to be audited and allowed by the Board of Examiners, and paid out of any moneys in the State Treasury appropriated for that purpose. The necessary expenses of an assistant, when more than one person is required to convey such insane person, shall also be allowed; *provided, however*, that the person in charge of such insane person shall certify, under oath, the urgent necessity of such assistance. No compensation, except as herein provided, shall be received or allowed for delivering insane persons at the Asylums. [In effect April 12, 1880.]

Before amendment 1880—mileage received by person delivering patients; held that Sheriff of San Francisco received such sums as compensation for official services and was bound to pay them into the local treasury, 50 Cal. 119.

2222. The physicians attending each examination of an insane person are allowed five dollars each, to be paid by the County Treasurer of the county where the examination was had, on the order of the Board of Supervisors.

CHAPTER II.

Deaf, Dumb, and Blind Asylum.

ARTICLE I. GENERAL PROVISIONS.
II. BOARD OF DIRECTORS.
III. PRINCIPAL TEACHER.
IV. TREASURER.

ARTICLE I.

GENERAL PROVISIONS.

§ 2237. Object of Asylum.
§ 2238. Who entitled to its benefits.
§ 2239. Same.
§ 2240. Clothing and maintenance of pupils.
§ 2241. Blindness and deafness defined.
§ 2242. Geological cabinet.
§ 2243. Salaries, how paid.
§ 2244. Approval and filing of official bonds.

2237. The Deaf, Dumb, and Blind Asylum, located in Alameda County, has for its object the education of the deaf, dumb, and blind.

Acts relating to Asylum—appropriations, Stats. 1872, pp. 34, 743; 1874, p. 898; 1876, pp. 53, 593, 747; erection of buildings and improvements, Stats. 1880, p. 190 or 37; reimbursing support fund, Stats. 1880, p. 284 or 118. Water supply, Stats. 1876, p. 816.

2238. Every deaf, dumb, or blind person, resident of this State, of suitable age and capacity, is entitled to an education in this Asylum free of charge.

2239. Such persons not residents of this State are entitled to the benefits of this Asylum upon paying to the Treasurer thereof eighty-five dollars quarterly in advance.

2240. If the parents or guardians of any pupil in the Asylum for the Deaf, Dumb, and Blind shall be unable to clothe such child, the parent or guardian may testify to such inability before the Judge of the Superior Court of the county wherein he or she is resident, and if said Judge is satisfied that the parent or guardian is not able to provide suitable clothing for the child, he shall issue a certificate to that effect;

and, upon presentation of such certificate, it shall be the duty of the Directors of said Asylum to clothe the child, the expenses to be paid out of the appropriations made for the support of the Asylum. All pupils in the Asylum shall be maintained at the expense of the State. [In effect April 3, 1880.]

2241. Inability by reason of defective sight to read ordinary printed matter is blindness, and inability to hear ordinary conversation is deafness, within the meaning of this chapter.

2242. The State Geologist and Regents of the University may make up from duplicate specimens under their control a geological cabinet for the use of the Asylum.

2243. The salaries mentioned in this chapter must be paid monthly out of the moneys appropriated for the support of the Asylum.

2244. The official bonds required by the provisions of this chapter must be approved by the Board, and filed and recorded in the office of the Secretary of State.

Official bonds—§§ 947-986.

ARTICLE II.

BOARD OF DIRECTORS.

§ 2254. Under control of Board of Directors.
§ 2255. Powers and duties of Board.
§ 2256. Approval of estimates and drawing of moneys.
§ 2257. Directors to receive no salary.

2254. The Asylum is under the management and control of a Board of Directors, consisting of five persons, appointed and holding their offices as provided in Title I of Part III of this Code.

Board of Directors—appointment and term of office, §§ 368, subd. 2, and 369.

2255. The powers and duties of the Board are as follows:

1. To make by-laws, not inconsistent with the laws of the State, for their own government, and the government of the Asylum.
2. To elect the principal teacher.
3. To elect a Treasurer, who shall not be a member of the Board of Directors.
4. To elect a Physician for the Asylum, for the term of two years, who shall not be a member of the Board of Directors.

5. To remove, at pleasure, any teacher or employee.
6. To fix the compensation of teachers and employees.
7. To make diligent inquiry into the departments of labor and expense, the condition of the Asylum, and its prosperity.
8. To hold stated meetings at the Asylum at least once in every three months.
9. To keep a record of their proceedings.
10. To report to the Governor a statement of the receipts and expenditures, the condition of the Asylum, the number of pupils, and of such other matters touching the duties of the Board as they deem advisable. [Approved March 30; in effect July 6, 1874.]

Power of Board over bequests—to manage and invest, also to act on estimates made under § 2168, Stats. 1876, p. 686.

2256. If the Board approve the estimates made under the provisions of Section 2268, it must notify the Controller of State, who must draw his warrant for the amount estimated, in three equal sums, payable to the Board monthly, out of any moneys in the State Treasury appropriated for the use of the Asylum.

2257. The Directors receive no compensation.

ARTICLE III.

PRINCIPAL TEACHER.

§ 2267. Qualifications.
§ 2268. Powers and duties.
§ 2269. Salary.
§ 2270. Bond.

2267. The principal teacher must have not less than three years' experience in the art of teaching the deaf, dumb, and blind.

2268. He is the chief executive officer of the Asylum, with powers and duties as follows:
1. To superintend the grounds, buildings, and property of the Asylum;
2. With the consent of the Board of Directors, to fix the number of and appoint and remove the assistant teachers and employees;
3. To prescribe and enforce the performance of the duties of the assistant teachers and employees;
4. To control the pupils and prescribe and enforce a system of instruction;
5. To reside at the Asylum;

6. To keep a daily record of his official acts in the manner prescribed by the by-laws;
7. To estimate quarterly in advance the expenses of the institution, and report such estimate to the Board of Directors;
8. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible report a statement thereof and of the condition of the Asylum to the Board of Directors.

2269. His annual salary must not exceed three thousand dollars.

2270. He must execute an official bond in the sum of five thousand dollars.

Official bonds—§ 947 *et seq.*

ARTICLE IV.

TREASURER.

§ 2280. Duties of.
§ 2281. Salary.
§ 2282. Bond.

2280. It is the duty of the Treasurer:
1. To act as Secretary of the Board of Directors;
2. To keep the accounts of the Board and of the receipts, expenditures, assets, and liabilities of the Asylum;
3. To report quarterly to the Board a statement under oath of the receipts and expenditures of the preceding quarter;
4. To perform such other duties as may be required of him by the by-laws or Board of Directors.

2281. The annual salary of the Treasurer is five hundred dollars.

2282. He must execute an official bond in the sum of ten thousand dollars.

CHAPTER III.

State Library.

§ 2292. Board of Trustees, and term of office of.
§ 2293. General powers and duties of Board.
§ 2294. Term of office of Librarian.
§ 2295. General duties of Librarian.
§ 2296. Who may take books.
§ 2297. Books taken by members of Legislature.
§ 2298. Books taken by State officers.
§ 2299. Liability for injury to books.
§ 2300. Library Fund.
§ 2301. Library, time to be kept open.
§ 2302. Salary of Librarian.
§ 2303. Salary of Deputies.
§ 2304. Bond of Librarian.
§ 2305. When this Chapter takes effect.

2292. The State Library is under the control of a Board of Trustees, consisting of five members, elected by the Legislature in joint convention assembled, and holding their offices for the term of four years.

Origin of chapter—see Stats. 1860, p. 168; 1861, p. 45; 1864, p. 198; 1866, p. 135; 1870, p. 381.

Trustee of State Library—Under former Act, held that office executive and could not be filled by Chief Justice of Supreme Court, 30 Cal. 167.

San Francisco Law Library—Stats. 1870, p. 235; Stats. 1880, p. 194 or 40.

2293. The powers and duties of the Board are as follows:

1. To make rules and regulations not inconsistent with law for their government and for the government of the Library;
2. To appoint a Librarian;
3. Whenever necessary, to authorize the Librarian to appoint an additional deputy;
4. To sell or exchange duplicate copies of books;
5. To keep in order and repair the books and property in the Library.
6. To draw from the State Treasury at any time all moneys therein belonging to the Library Fund;
7. To report to the Governor biennially a statement of their transactions.

SUBDIVISION 6. **Draw all moneys**—Board may, for books, etc., without first presenting claims to Board of Examiners, 55 Cal. 488.

2294. The Librarian holds his office for the term of four years, unless sooner removed by a unanimous vote of all the *Trustees.*

2295. It is the duty of the Librarian:

1. To be in attendance at the Library during office hours;
2. To act as Secretary of the Board of Trustees, and keep a record of their proceedings;
3. To purchase books, maps, engravings, paintings, and furniture for the Library;
4. To number and stamp all books and maps belonging to the Library, and to keep a catalogue thereof;
5. To have bound all books and papers that require binding;
6. To keep a register of all books and property added to Library, and of the cost thereof;
7. To keep a reister of all books taken from the Library;
8. To establish and maintain a system of domestic and foreign exchange of books, and to obtain from the Secretary of State such numbers of all State publications as may be sufficient to meet the demands of the system established. [Approved March 30; in effect July 6, 1874.]

Cabinet department—in State Library, Stats. 1872, p. 824. Transfer of mineralogical specimens to Mining Bureau, Senate Concurrent Resolution No. 10, in Stats. 1881, p. 103.

2296. Books may be taken from the Library by the members of the Legislature during the sessions thereof, and by other State officers at any time.

2297. Books taken by members of the Legislature must be returned at the close of the session; and before the Controller draws his warrant in favor of any member of the Legislature for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto.

2298. The Controller, if notified by the Librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not daw his warrant for the salary of such officer until the return is made, or three times the value of the books, or of any injuries thereto, has been paid to the Librarian.

2299. Every person who injures or fails to return any book taken is liable to the Librarian in three times the value thereof.

2300. The State Library Fund consists of the fees collected and paid into the State Treasury by the Secretary of State and Surveyor General. [Approved March 30; in effect July 6, 1874.]

2301. During the session of the Legislature and of the Supreme Court, the Library must be kept open every day from nine o'clock A. M. until nine o'clock P. M., and at other times during such hours as the Trustees may direct.

2302. The annual salary of the Librarian is three thousand dollars.

2303. The annual salary of each Deputy is eighteen hundred dollars.

2304. The Librarian must execute an official bond in the sum of three thousand dollars.

Official bonds—§ 947 *et seq.*

2305. This chapter shall be in force and effect from and after the first day of May, eighteen hundred and seventy-two.

CHAPTER IV.

Supreme Court Library.

§ 2313. Who may use.
§ 2314. Librarian and his duties.
§ 2315. Who may take books.
§ 2316. Fund for support of.

2313. This Library is for the use of the Justices and counselors at law of the Supreme Court.

2314. The Secretary of the Supreme Court, under the supervision of the Court, is the Librarian, and responsible for the safe keeping of the books. Before used he must mark and number the volumes, and enter them in a catalogue kept in the Library.

2315. Books may be taken from this Library by the Justices of the Supreme Court. At the request of a counselor of the Court, the Bailiff must take from the Library to the Court room books for use in the argument of any cause.

2316. The Supreme Court Library Fund consists of fees collected by the Clerk of the Court, as provided in Section 753 of this Code, and is under the control of the Court. Upon its order the Controller must, without the approval of any Board, draw his warrant upon the Treasurer for the amount specified, and in favor of the person designated in such order, which warrant must be paid out of such fund.

CHAPTER V.

Other Public Institutions.

§ 2326. State Agricultural Society.
§ 2327. University of California, Normal School.
§ 2328. State Prison.

2326. The powers, duties, privileges, and rights of the California State Agricultural Society are fixed by "An Act to incorporate the State Agricultural Society, and to appropriate money for its support," approved May thirteenth, eighteen hundred and fifty-four, and the Acts supplemental thereto, approved March twelfth, eighteen hundred and sixty-three, and April thirteenth, eighteen hundred and sixty-three.

Board of Agriculture—§ 705.

Acts relating to State Agricultural Society—Stats. 1854, p. 163; 1858, p. 89. Supplementary Acts, Stats. 1863, pp. 49, 259. Act for encouragement of agriculture and other industries, Stats. 1872, p. 442. Special Acts, Stats. 1859, p. 20; 1861, pp. 228, 272, 501; 1864, p. 313; 1870, p. 820; 1874, p. 619; 1876, p. 574; 1878, p. 332. State management and control, Stats. 1880, p. 212 or 49.

Agricultural societies—agricultural districts and agricultural associations therein under State control, Stats. 1880, p. 238 or 62. Former Act on like subject, Stats. 1859, p. 104; amd. by Stats. 1878, p. 84. Agricultural Fair Corporations, Civil Code, §§ 620-622, and see § 288 of same.

Horticultural Commissioners—County Boards of, Stats. 1881, p. 88.

2327. The control and management of the University of California and the State Normal School are provided for in Title III, of Part III, of this Code.

University of California—§§ 1385-1477.

State Normal School—§§ 1487-1507.

2328. The control and management of the State Prison is provided for in Part III of the Penal Code.

State Prison—Control and management of, see Act in Stats. 1880, p. 243 or 67; amd. by Stats. 1881, p. 81. Appropriations for deficiencies for completion of Branch State Prison at Folsom, Stats. 1881, p. 33; for manufacture of jute at State Prison in San Quentin, Stats. 1881, p. 34.

Other public institutions—State Hospital and Asylum for Miners created, Stats. 1881, p. 83.

TITLE VI.

Public Ways.

CHAPTER I. PUBLIC WATERS.
II. HIGHWAYS.
III. TOLL ROADS.
IV. TOLL BRIDGES AND FERRIES.
V. WHARVES, CHUTES, AND PIERS.
VI. MISCELLANEOUS PROVISIONS RELATING TO PUBLIC WAYS.

CHAPTER I.

Public Waters.

ARTICLE I. GENERAL PROVISIONS RESPECTING PUBLIC WATERS.
II. NAVIGATION.
III. FLOATING LUMBER.
IV. WRECKS AND WRECKED PROPERTY.
V. PILOTS AND PILOT COMMISSIONERS.
VI. PILOT REGULATIONS FOR SAN FRANCISCO, BENICIA, AND MARE ISLAND.
VII. PILOT REGULATIONS FOR HUMBOLDT BAY AND BAR.
VIII. PORT WARDENS.
IX. SAN FRANCISCO HARBOR AND STATE HARBOR COMMISSIONERS.
X. HARBOR COMMISSIONERS FOR PORT OF EUREKA
XI. SAILORS AND SAILOR BOARDING HOUSES.

ARTICLE I.

GENERAL PROVISIONS RESPECTING PUBLIC WATERS AND OBSTRUCTIONS THEREIN.

§ 2348. What waters are public ways.
§ 2349. Certain streams and waters declared navigable, and are public ways.
§ 2350. Penalty for felling trees into public waters.
§ 2351. Napa creek declared navigable.

2348. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and of such transportation.

Navigable waters—frontages on, subject to right of eminent domain, Const. Cal. 1879, art. 15, § 1; prohibition against obstruction, Const. Cal. 1879, art. 15, § 2.

Navigable stream—obstructing is misdemeanor, Penal Code, § 612; obstruction must be shown to be unreasonable, in action to abate it as a nuisance, 50 Cal. 129.

Capacity to transport—products of the country, as test of navigability, 6 Cal. 446.

Bridges—across navigable streams and other waters, Stats. 1881, p. 78.

Towpaths—along banks of navigable streams, authorized, Stats. 1872, p. 940.

Public way—All that part of a bay or river below low water or low tide, held public highway in 1 Cal. 468.

2349. The following streams and waters are declared public ways:

So much of a slough as lies between Simon's Canal, in the Town of Alviso, and the Bay of San Francisco.

Petaluma River, from its mouth to a distance one-third of one mile above Washington street, in the City of Petaluma.

The Sonoma River, between its mouth and a point opposite Fowler's Hotel, in the Town of San Luis.

The Napa River, between its mouth and the toll bridge.

The Suisun River, between its mouth and the Town of Suisun embarcadero.

The Sacramento River, between its mouth and the mouth of Middle Creek.

Feather River, between its mouth and a point fifty feet below the bridge crossing Feather River first above the mouth of the Yuba River.

The Yuba River, between its mouth and a point at the mouth of the slough at the foot of F street, in the City of Marysville.

The San Joaquin River, between its mouth and Sycamore Point.

The Stockton Slough, between its mouth and the west line of El Dorado street, in Stockton.

The Mokelumne River, between its mouth and the first falls.

The Tuolumne River, between its mouth and Dickinson's Ferry.

Deer Creek, between the house of Peter Lassen and its mouth.

Big River, three miles from its mouth.

Noyo River, three miles from its mouth.

Albion River, three miles from its mouth.

San Antonio Creek, in the County of Alameda, from its mouth to the old embarcadero of San Antonio.

The Arroyo del Medo, in the County of Santa Clara, from its mouth to the upper line of the Town of New Haven.

Mission Creek, in the County of San Francisco.

Islais Creek, in the County of San Francisco, from Franconia Landing, near Bay View Turnpike, to its outlet into the Bay of San Francisco, and thence easterly along the southerly line of Tulare street to the city water front on Massachusetts street, of the width of the channel of said creek.

That portion of Channel street, in the City of San Francisco, and lying east of and between the easterly line of Harrison street and the water front of the Bay of San Francisco, the width thereof to be sixty feet from Harrison to the northeasterly line of Seventh street, and one hundred and forty feet from the northeasterly line of Seventh street to the city front.

That certain creek running through tide land survey numbered sixty-eight, and swamp and overflowed land survey numbered one hundred and forty-five, from its mouth to the head of tide water therein

San Leandro Creek, from its mouth at San Francisco Bay to Andrews' Landing.

San Lorenzo Creek, from its mouth at San Francisco Bay to Roberts' Landing.

Johnson's Creek, from its mouth at San Francisco Bay to Simpson's Landing.

The north branch of Alameda Creek, from its mouth to Eden Landing.

San Rafael and Corte Madera Creeks, in Marin County, from their mouths as far up as tide water flows therein.

The Neuces Creek, from its mouth at Suisun Bay to a point one-half mile above the warehouse of George P. Loucks.

Diablo Creek, from its junction with the Neuces to a point opposite the warehouse of Frank Such, in Contra Costa County.

The Arroyo de San Antonio, or Keys Creek, in Marin County, from its mouth at Tomales Bay to the warehouses on the point at Keys' embarcadero.

All the streams and sloughs emptying into Elk River, and all streams and sloughs south of Eureka, in Humboldt County,

which are now or at any time have been used for the purpose of floating logs of timber, and all the sloughs south of Humboldt Point, in said county, that at high water have a depth of two feet of water and wide enough to float and admit a boat carrying five tons or more freight.

Novato Creek, or estuary, in Marin County, from its mouth to Sweetzer's Landing.

Salinas River and Elkhorn Slough, or Estero Viejo, in Monterey County, from its mouth as far up as tide water flows.

Basis of section—Stats. 1852, pp. 182, 223; 1854, p. 18; 1858, p. 127; 1860, pp. 126, 159, 257; 1861, pp. 49, 274; 1868, pp. 355, 356, 486, 680; 1870, pp. 663, 721.

Other streams and waters declared navigable—Alameda County, creek in Washington Township of, Stats. 1872, p. 307, Alameda creek in, declared navigable stream, and removal of obstructions therefrom provided for, Stats. 1874, p. 308. Del Norte County, Lake Earl in, Stats. 1874, p. 59; Smith river in, Stats. 1878, p. 799. Klamath river, Stats. 1880, p. 402 or 136. Lake County, Clear lake in, Stats. 1878, p. 630. Marin County, Arroyo de San Antonio, or Keyes creek (amdt. of statute on which provision in section founded), Stats. 1874, p. 564; Gallinas or Guyanas slough or creek, Stats. 1876, p. 485. Mokelumne river, Stats. 1880, p. 115 or 22. Monterey County, Moro Caja slough in, Stats. 1874, p. 790. Napa creeks, see § 2351; San Joaquin river and Stockton slough, Stats. 1872, p. 117. Sonoma County, Sonoma river in, Stats. 1878, p. 72.

Obstruction of river—declared navigable stream by Act prohibiting erection of a dam or bridge upon it, could not be authorized by Court, in violation of permissive clause of statute, 4 Cal. 181.

2350. Whoever cuts or causes to be cut down any tree, so that it falls into any stream or other waters declared by statute to be a public way, and does not remove it therefrom within twenty-four hours thereafter, is liable to a penalty of five dollars for each tree.

Malicious injuries to public highways—private ways, and bridges upon either, punishment for, Penal Code, § 588.

Causing obstruction to harbor—by throwing ballast overboard, or otherwise, is misdemeanor, Penal Code, § 613.

2351. The streams known as First Napa Creek, Second Napa Creek, and Third Napa Creek, in the County of Sonoma, and between the Napa and Sonoma Rivers, in the County of Sonoma, are hereby declared navigable waters of the State, in pursuance of Title Sixth, Chapter One, Article One, of Part Three, of said Code. [Approved March 26, 1878.]

ARTICLE II.

NAVIGATION.

§ 2360. Steamers meeting.
§ 2361. Landing and receiving passengers by small boat.
§ 2362. Lines used for landing not to be drawn by machinery.
§ 2363. The engine to be stopped.
§ 2364. Boats, oars, and signals.
§ 2365. Steamers overtaking.
§ 2366. Steamers to carry signals at night.
§ 2367. Penalties, what amount.
§ 2368. Vessels at anchor to show lights.
§ 2369. No recovery for collision in case of neglect.
§ 2370. Rafts on the Sacramento and San Joaquin Rivers.
§ 2371. Vessels to carry what boats.
§ 2372. Penalty, what amount.
§ 2373. Racing, penalty for.
§ 2374. Steamboats to wear spark catchers.
§ 2375. Inspectors to supervise and direct spark catchers.
§ 2376. Compensation of Inspectors.
§ 2377. Neglect of duty and penalty therefor.
§ 2378. Owner liable for master's or engineer's penalties.
§ 2379. Penalties, how recovered.

2360. When steamers meet each must turn to the right, so as to pass without interference.

Rules of Navigation—collisions, etc., Civil Code, §§ 970-973.

Actions against steamers, vessels and boats—Code Civ. Proc., §§ 813-827.

2361. When a passenger is to be landed from a steamer by means of a small boat, he must not be suffered to get into it until it is completely afloat and wholly disengaged from the steamer, except by the painter.

2362. No line used for the purpose of landing or receiving passengers must be attached in any way to the machinery of any steamer, nor must the small boat used for such purpose be hauled in by means of such machinery.

2363. During the landing and receiving of a passenger, and the going and returning of the small boat for the purpose, the engine must be stopped, and must not be put in motion, except to give sufficient force to keep the steamer in a proper direction and safe position.

2364. In every small boat there must be kept a good and suitable pair of oars; and in the nighttime a signal, by means of a horn or trumpet, must be given to the steamer from the small boat, when, having landed or received its passengers, it is ready to leave the shore.

2365. A steamer going in the same direction with another steamer ahead of it must not approach or pass the other within the distance of ten yards; and the steamer ahead must not be so navigated as unnecessarily to bring it within ten yards of the steamer following.

2366. When any steamer is running in the nighttime her master must cause her to carry two conspicuous lights; one exposed near her bow and the other near her stern; the latter must be at least twenty feet above her deck.

2367. Every master or other person in charge who violates any of the provisions of the preceding seven sections, incurs a penalty of two hundred and fifty dollars for each offense.

2368. When any vessel is at anchor in the nighttime in any of the harbors or ports within the jurisdiction of this State, the master or other person at the time in charge of the vessel must cause a conspicuous light shown in her rigging at least twenty feet above her deck, and another light from her taffrail, under penalty of fifty dollars for every neglect.

Vessel in harbor—of San Francisco not setting light nor keeping watch in a dark night, is deemed guilty of negligence and barred from recovering damages (see § 2369) sustained by being run into by steamer, 1 Cal. 459.

2369. Neither the master or owner of any vessel can recover damages for injuries to the same or to himself by a collision growing out of a non-compliance upon its part with the provisions of the preceding six sections.

Collisions—Civil Code, §§ 970–973.

2370. Every raft of timber floated on the Sacramento or San Joaquin rivers at night must show two red lights, one at each end, and at least ten feet above the upper logs or plank of such raft, under penalty of fifty dollars for every neglect.

2371. Every vessel propelled by steam, navigating any waters of this State and carrying passengers, must be provided with boats as follows:

1. If of five hundred tons measurement, one first-class life boat; one row boat, twenty-five feet long by seven wide, capable of carrying fifty persons each; and at least one other good row boat;

2. If of two hundred and fifty and less than five hundred tons measurement, at least two ordinary row boats;

3. If of less than two hundred and fifty tons burden, at least one small row boat.

All which boats must be attached in such manner that they can be launched at any time for immediate use.

2372. The master and owners, and each of them, of any vessel not provided with boats as required in the preceding section, are subject to a penalty of not exceeding two hundred and fifty dollars.

2373. If the master or other person in charge of a steamer navigating any of the waters of this State and used for the conveyance of passengers, or if the engineer or other person in charge of the boiler or other apparatus for the generation of steam does, for the purpose of increasing speed or excelling any other vessel in speed, suffer to be created an undue or an unsafe quantity of steam, he is subject to a penalty of five hundred dollars.

2374. All high pressure steamboats navigating the Sacramento and San Joaquin rivers, or any of their tributaries above the mouth of the San Joaquin river or the City of Sacramento, must have securely attached to their chimneys metal bonnets or spark catchers.

Basis of section—and two succeeding sections, Stats. 1857, p. 149.

2375. All such bonnets or spark catchers must be constructed under the direction and supervision of the United States Inspectors of Steamboats for the District of San Francisco.

2376. For each bonnet or spark catcher worn by any steamboat inspected or constructed under the direction of and certified to by the Inspector, he may receive from the owner thereof ten dollars as a compensation for his services for such direction, supervision, or inspection and certificate.

2377. Every owner or master who navigates a steamboat without bonnets or spark catchers inspected and attached as required by the preceding three sections, is subject to a penalty of twenty dollars for each day he navigates his boat without the same. The owner of such boat is further liable for all damage done by reason of such neglect.

Basis of section—Stats. 1857, p. 150.

Liability for damages—where carelessness by master of steamboat, 9 Cal. 255.

2378. The owners of every steamboat are responsible for the good conduct of the master or other person in charge employed by them, and they are jointly and severally liable for any penalty incurred by the master, engineer, or other

person in charge, which cannot be collected from him by due course of law, as if they were his sureties.

Basis of section—and of next, Stats. 1857, p. 150.

2379. The penalties given by this article may be recovered by the District Attorney of any county bordering on the water where the offense was committed or the penalty incurred, to whom notice is first given, and when recovered are to be equally divided between the Common School and Indigent Sick Fund of the county whose District Attorney recovers the same. Any judgment recovered hereunder is a lien on the vessel against whose owners or master it is recovered.

ARTICLE III.

FLOATING LUMBER.

§ 2389. Definition of lumber.
§ 2390. Owner may reclaim lumber.
§ 2391. If not taken away to be turned over to Sheriff.
§ 2392. Application of proceeds when sold.
§ 2393. Subsequent disposition of proceeds.

2389. The word "lumber" is used in this article to designate all timber, whether in logs, boards, planks, or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called drift wood.

Logs and timber—booms for purpose of holding, County Boards of Supervisors authorized to grant privilege of constructing, if do not interfere with navigation, Stats. 1881, p. 24.

2390. Whenever any lumber drifts upon any island in any of the waters of this State, or upon the bank of any such waters, the owner of the lumber may remove it on payment or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear proofs and determine the same at the expense of the owner of the lumber.

Tender of damages—unnecessary when damage disclaimed, 53 Cal. 20-21.

Proof that no damage sustained—by owner of land upon which lumber drifted, need not be made by owner of lumber suing in replevin, 53 Cal. 22.

Appraisement by disinterested citizens—provision for in section, inadequate in not intelligibly stating who shall choose the arbitrators, 53 Cal. 22.

2391. If the owner of such lumber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the lumber, to the Sheriff of the county, and thereafter the Sheriff must dispose of the same as is required by Article IV of this Chapter with regard to wrecked perishable property.

2392. When sold, the proceeds of the lumber must be applied, first, to the payment of the charges of sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the County Treasurer, to be by him paid over to the owner, or his representatives, or assigns, on the production of satisfactory proof of ownership to the Judge of the Superior Court of the county, and on his order therefor, made within one year after its receipt. [In effect April 3, 1880.]

2393. The rejection by the Judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the County Treasurer, be placed in the Common School Fund of the county. [In effect April 3, 1880.]

ARTICLE IV.

WRECKS AND WRECKED PROPERTY.

§ 2403. Duties of officers and citizens.
§ 2404. Officers etc., entitled to salvage. Salvage not to exceed half value of property saved.
§ 2405. Owners of wrecked property may reclaim it.
§ 2406. Sheriff to keep possession until owner found.
§ 2407. Perishable property.
§ 2408. Order for surrender to claimant.
§ 2409. Claimant to first give bond.
§ 2410. Action on bond.
§ 2411 Owner may sue, although claim rejected.
§ 2412. Salvage to be stated in writing.
§ 2413. Proceedings to settle disputed claims to salvage.
§ 2414. Costs of contest.
§ 2415. Wrecked property not claimed to be sold.
§ 2416. Notice of sale.
§ 2417. Notice of wrecked property.
§ 2418. Expense of notice.

2403. The Sheriff in each county must give all possible aid and assistance to vessels stranded on its coast, and to the persons on board the same, and exert himself to save and preserve such persons, vessels, and their cargoes, and all goods and merchandise which may be cast by the sea upon the land,

and to this end may employ as many persons as he may think proper. All citizens must aid the Sheriff when required.

General basis of article—Stats. 1850, p. 173.

Wrecked property—distinguished from lost and unclaimed property, §§ 3136-3157.

2404. Sheriffs and all persons employed by them, or aiding in the recovery and preservation of wrecked property, are entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved; and the officer having the custody of such property must detain it until the same are paid or tendered. But the whole salvage claimed must not exceed one-half of the value of the property or proceeds on which it is charged; and every agreement, order, or adjustment allowing a greater salvage is void, unless ordered and allowed by the County Judge.

Salvage—seaman's right to, Civil Code, §§ 2052, 2058, 2059; deduction for, § 2060. To other persons than mariners, Civil Code, § 2079. In insurance, Civil Code, § 2725.

County Judge—Courts then existing abolished by Const. Cal. 1879, see art. 22, § 1; Superior Courts, see Code Civ. Proc., §§ 65-79.

2405. Wrecked property may be kept or reclaimed, at the time of the wreck, by the owner, consignee, or other person entitled to the possession; but if any person has a just claim for salvage and necessary expenses incurred in saving it, he must be paid before the property is reclaimed.

Detaining wrecked property after salvage paid—punishment for, Penal Code, § 544.

2406. The Sheriff of every county in which any wrecked property is found, when no owner or other person entitled to possession appears, must take possession of it in the name of the people, cause the value thereof to be appraised by disinterested persons, and keep it in some safe place to answer the owner's claims.

Unlawfully taking or retaining possession—of wrecked property, and failure to deliver same to Sheriff or notify him, is misdemeanor, Penal Code, § 545.

Obligation of finder—of property in general, Civil Code, § 1864 *et seq.*

2407. If it is in a perishable state, the Sheriff must apply to the Judge of the Superior Court, upon a verified petition, for an order authorizing him to sell it. If the Judge is satisfied that a sale of the property would be beneficial to the parties interested, he must make the order applied for, and the property must then be sold at public auction, at the time and in the manner specified in the order; and the proceeds, deducting the expenses of sale, as the same is settled and allowed

by such Judge, must be paid to the Treasurer of the county. [In effect April 3, 1880.]

2408. If, within a year after the finding, any person claims the property, or its proceeds, and establishes his claim by evidence satisfactory to the Judge of the Superior Court, such Judge must make an order directing the officer in whose possession the property or its proceeds may be, to deliver the same to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation. [In effect April 3, 1880.]

2409. Before making the order, the Judge must require from the claimant a bond to the people, with one or more sufficient sureties, to be approved by the Judge and filed with the County Clerk, in a penalty double the value of the property or proceeds, conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within three years after its date, by any person establishing title to the property or proceeds.

2410. If the bond becomes forfeited, the Judge of the Superior Court, upon the application, supported by proof of the person entitled to the benefit of it, must make an order for its prosecution for such person's benefit, and at his risk and expense. [In effect April 3, 1880.]

2411. The rejection by the Judge of any claim does not preclude the claimant from maintaining an action for the recovery of such property or its proceeds against the officer. If the plaintiff in any such action prevails, there must be deducted from the damages, in addition to salvage and expenses, all the defendant's costs.

2412. Every officer to whom an order for the delivery of wrecked property or the payment of its proceeds is directed, must present to the claimant exhibiting it a written statement of the claims for salvage and expenses. If the claimant refuses to allow such amount, it must be adjusted as hereinafter provided.

2413. If, in any case, the amount of salvage and expenses are not settled by agreement, the Superior Court of the county, on the application of the owner or consignee of the property, or the master or supercargo having charge thereof at the time of the wreck, or of a claimant having an order therefor, or of a person claiming salvage or expenses, must determine the same in a summary way, either by itself hearing the allega-

tions and proofs of the party, or by referring the questions to three disinterested freeholders of the county, who must have the same powers and must proceed in the same manner as referees in civil actions, and whose decisions as to the whole amount, and as to the sums to be paid to each person interested, must be entered as the judgment of the Court. [In effect April 3, 1880.]

Referees in civil actions—Code Civ. Proc., §§ 638-645.

2414. The fees and expenses of the contest must be paid by the person upon whose application it was had, and are a charge on the property saved. Each referee is entitled to such per diem and expenses as the County Judge may deem just.

County Judge—see § 240*in*

2415. If, within a year after saving wrecked property, no claimant of the property or its proceeds appears, or, if within three months after a claim, the salvage and expenses have not been paid, or a suit for the recovery of the property or its proceeds has not been commenced, the officer in whose custody it may be must sell it at public auction, if not already sold, and pay the proceeds of such sale, deducting salvage and expenses, into the Treasury of this State, for the benefit of the parties interested; but in no case must any deduction of salvage and expenses be made, unless the amount has been determined by the Superior Court of the county, a copy of whose order, and of the evidence in support thereof, must be transmitted by the Judge to the Controller. If any money paid to a County Treasurer, under section twenty-four hundred and seven, remains in his hands more than a year after it has been paid to him, the same must be paid into the State Treasury. [In effect April 3, 1880.]

2416. Public notice of every sale of wrecked property under the provisions of this chapter must be published by the officer making the sale for at least two weeks in succession in one or more newspapers printed in the county, or if none is printed therein, then by written or printed notices in three of the most public places in such county, posted up at least fifteen days previous to such sale. Every notice must state the time and place of the sale and contain a particular description of the property to be sold.

2417. Every Sheriff into whose possession any wrecked property comes must immediately thereafter publish, for at least two weeks in succession, in one or more of the newspapers printed in this State, a notice directed to all parties inter-

ested, giving a minute description of the property, and of every bale, box, case, piece, or parcel thereof, and of the marks, brands, letters, and figures on each, and stating where the same then is and its actual condition, and the name, if known, of the vessel from which it came, her master and supercargo, and the place where such vessel then is, and her actual condition.

Defacing marks upon wrecked property—Penal Code, § 355.

2418. The expense of publishing notices under the provisions of this chapter is a charge upon the property or proceeds to which it relates.

ARTICLE V.

PILOTS AND PILOT COMMISSIONERS.

§ 2429. Qualifications of pilots.
§ 2430. Comm ssions and license.
§ 2431. Pilots to take official oath and give bond.
§ 2432. Vessel, owner, etc., liable for pilotage.
§ 2433. Owners to compensate pilots for loss.
§ 2434. Pilot to show commission or license, when.
§ 2435. Pilots carried to sea or detained.
§ 2436. Pilots for ports other than San Francisco, Mare Island, Benicia, and Humboldt Bay.
§ 2437. Further duties of pilots.
§ 2438. Violating regulations.
§ 2439. Piloting vessels without license.
§ 2440. Pilot Commissioners for San Francisco, Mare Island and Benicia, how appointed.
§ 2441. Pilot Commissioners for Humboldt Bay and Bar, how appointed.
§ 2442. Term of office.
§ 2443. Boards to organize, and meetings.
§ 2444. Powers of President.
§ 2445. Powers of the Boards.
§ 2446. Secretaries of Boards, and records.
§ 2447. Not to be interested in pilot boats.

2429. No person must be appointed a pilot unless he is an American citizen, over the age of twenty-one years, with a practical knowledge of the management of sailing vessels and steamboats, and of the tides, soundings, bearings and distances of the several shoals, bars, rocks, points of land, lighthouses, and fog signals of the ports and harbors for which he is appointed, of good moral character, and temperate, with the skill and ability necessary to discharge the dutiesof pilot.

Basis of section—Stats. 1850, p. 46; 1860, p. 74; 1870, p. 344.

Similar qualifications—required by former statute, 14 Cal. 44.

Pilot lacking necessary statutory qualifications—cannot be appointed, 14 Cal. 43; 16 Cal. 366.

Examination—as to qualifications, § 2430.

Position of Pilot—is an office, 14 Cal. 45; action for usurpation of such office, 16 Cal. 358.

2430. Pilots appointed by Commissioners must be carefully examined as to their qualifications, and, if found to be qualified and worthy, must receive license as pilots for the term of twelve months, which license shall be thereafter annually renewed until the Commissioners have good cause to withhold such renewal; and whenever the Commissioners deem they have such cause, or intend for any reason to withhold such renewal, the Secretary of the Board of Commissioners shall serve notice, in writing, on such pilot, specifying the causes, at least ten days before the expiration of his license; and such pilot shall thereupon be entitled to a full hearing before said Board. [In effect March 29, 1878.]

Amendment 1878—added provisions for renewal of license, for more definite notice of withholding, and for hearing before Board.

Basis of section—Before amdt. 1878, same as last section.

Qualifications—§ 2429 and notes.

Notice of Board's action—published in newspaper, Board not civilly answerable for, 6 Cal. 94.

Hearing before Board—§ 2464.

2431. Every pilot must execute an official bond in the sum of five thousand dollars, to be approved by the officer or Board appointing him. The bonds of pilots appointed by Commissioners must be filed with such Commissioners.

Basis of section—same as of § 2429.

Official bond—§§ 947-986; liability of pilot on his official bond, § 2438.

2432. All vessels, their tackle, apparel, and furniture, and the master and owners thereof, are jointly and severally liable for pilotage fees, to be recovered in any Court of competent jurisdiction.

Basis of section—Stats. 1870, p. 349.

2433. If any pilot, in endeavoring to assist or relieve any vessel in distress, suffers loss or damage in his boats, sails, tackle, rigging, or appurtenances, the master, owner, or consignee of such vessel must pay the value of such loss or damage, to be ascertained by the Commissioners.

Section founded—on Stats. 1860, p. 78.

2434. Every pilot, on boarding a vessel, when required by the master thereof, must exhibit his commission or license as pilot. A refusal so to do subjects him to a forfeiture of his commission or license, and to a recovery of fifty dollars on his bond in a suit instituted for that purpose by the authority appointing him.

Basis of section—Stats. 1860, p. 74; 1870, p. 344.
License as Pilot—§ 2430.

2435. Every pilot carried to sea against his will, or unnecessarily detained on board of a vessel when a pilot boat is in attendance to receive him, is entitled to receive the sum of eight dollars per day while necessarily absent or detained, not to exceed in the aggregate the sum of one thousand dollars in any one case, which sum may be recovered by action against the master or owner of the vessel so taking him away.

Section founded—on Stats. 1850, p. 46; 1860, pp. 74, 77; 1870, p. 344.

2436. Pilots for all the ports in this State, other than San Francisco, Mare Island, Benicia, and Humboldt Bay, are governed by the following regulations:

1. They must keep, for the purpose of piloting, at least one boat for every six pilots, in good condition, and seaworthy, sufficiently large to cruise in heavy weather, to be exclusively used as a pilot boat;
2. They must cruise at least ten marine miles seaward from the headlands at the entrance of the port;
3. They shall receive for piloting every vessel into or out of port the sum of eight dollars per foot draught;
4. When the person commanding any vessel refuses to take a pilot, the pilot first offering his services is entitled to half pilotage;
5. For incompetency, neglect of duty, or other good cause, the Governor may suspend or remove any pilot appointed by him;
6. They must strictly observe and obey all legally established quarantine regulations.

Basis of section—Stats. 1850, p. 46.

SUBDIVISION 4. Half Pilotage—not a toll in constitutional sense, 18 Cal. 95.

2437. When cruising off or standing out to sea, pilots must go to a vessel nearest to shore, or in the most distress, under a penalty of one hundred dollars; for refusing to go on board a vessel when required, a like penalty of one hundred dollars may be imposed; in either case, upon conviction, the pilot may be suspended or expelled, at the discretion of the Commissioners.

Section based on—Stats. 1860, p. 78.

2438. For every violation of the duties and regulations herein specified, the pilot so violating is liable on his official bond to the party aggrieved to the amount of the damages sustained.

Official bond—of Pilot, § 2431.

2439. Any person not the master or owner, and not holding a commission or license as a pilot, who pilots any vessel into or out of any harbor or port of this State for which there are commissioned or licensed pilots, must be punished therefor as provided in the Penal Code, Section 379, and must pay to the pilot entitled to pilot such vessel the amount of pilotage or towage collected by him.

Basis of section—Stats. 1860, p. 77; 1870, p. 345.

Unlicensed piloting—is misdemeanor, Penal Code, § 379; action for usurpation of office on account of, 16 Cal. 358.

2440. There must be appointed by the Governor, by and with the advice of the Senate, three experienced and competent shipmasters or nautical men, citizens of the United States, and residents in either of the cities of San Francisco, Oakland, Vallejo, or Benicia, or of the towns of Brooklyn or Alameda, a Board of Pilot Commissioners for the ports of San Francisco, Mare Island, and Benicia.

Basis of section—Stats. 1870, p. 344.

Board of Pilot Commissioners—are in the nature of judicial officers, hence not civilly responsible for their acts, 6 Cal. 94; bound to select pilots from those having the required qualifications, see § 2429*n*.

Pilot Regulations—for San Francisco, Mare Island and Benicia, §§ 2457-2470.

2441. There must be appointed by the Governor three Pilot Commissioners for Humboldt Bay and Bar. Two of the persons so appointed must be resident business men, and the other a shipmaster or nautical man, and a resident of Eureka, Humboldt County, who must constitute a Board of Pilot Commissioners for Humboldt Bay and Bar.

Basis of section—Stats. 1860, p. 74.

Board of Pilot Commissioners—§ 2440*n*.

Pilot regulations—for Humboldt Bay and Bar, §§ 2476-2491.

San Diego Pilots and Pilot Regulations—Stats. 1872, p. 650.

2442. The Commissioners hold their offices during the pleasure of the power appointing them, not exceeding four years from the date of their commissions.

Basis of section—Stats. 1870, p. 344.

2443. The Commissioners must organize as Boards, respectively, by the election of Presidents, Secretaries, and Treasurers. They must provide for themselves offices, in which they must meet as follows: The "San Francisco Board" must meet once a month in the City of San Francisco, and the "Humboldt Board" must meet at Eureka on the first Mondays in January, April, July, and October.

Basis of section—Stats. 1860, p. 75; 1870, p. 345.

2444. The President of each Board is authorized to administer oaths in regard to any matter properly before it, and to issue subpœnas in like cases for witnesses. A witness disobeying such subpœna served on him must pay to the Board one hundred dollars, for which judgment may be recovered by the President in a civil action.

Basis of section—Stats. 1870, p. 345.

Administration of oaths, etc.—Code Civ. Proc., § 2093 *et seq.*

Subpœnas for witnesses, etc.—Code Civ. Proc., § 1985 *et seq.*

2445. Each Board must make by-laws and rules for the government of pilots appointed by it; and may adjourn their regular meetings from time to time. The Humboldt Board must hold a special meeting on notice of one member, published in a newspaper in Humboldt County five days prior to the proposed meeting. The San Francisco Board may appoint a Secretary and fix his compensation, not to exceed the sum of two hundred and fifty dollars per month. The Secretary of the Humboldt Board must be one of the members thereof.

Basis of section—Stats. 1860, p. 75; 1870, p. 345.

2446. The Secretary of each Board must keep a journal of all its proceedings and acts, and a register of all pilots appointed, their residence and date of license; and must, under order of the Board, issue licenses to be signed by the President, and countersign the same. The Secretary of the Humboldt Board is the Treasurer thereof.

Basis of section—and of next, Stats. 1870, p. 345.

2447. Neither the Commissioners nor their Secretaries must have any interest in any pilot boat or steam tug, nor in the earnings thereof, other than for compensation as herein provided. Any one violating this section forfeits his office.

ARTICLE VI.

PILOT REGULATIONS FOR SAN FRANCISCO, MARE ISLAND, AND BENICIA.

§ 2457. Commissioners to examine and license pilots.
§ 2458. Pilots to keep boats.
§ 2459. Pilots to prevent premature boarding. Arrest of offenders.
§ 2460. To render monthly account of pilotage.
§ 2461. Board may revoke license and suspend pilots.
§ 2462. Causes for revocation.
§ 2463. Complaint against pilot to be verified, and how disposed of.
§ 2464. Trial and review on withholding or revocation of license.
§ 2465. Certain pilotage to be agreed on.

§ 2466. Rates of pilotage at San Francisco.
§ 2467. Exemption from pilotage of certain vessels.
§ 2468. Certain vessels exempt from pilotage.
§ 2469. When two pilots offer services.
§ 2470. Pilot bringing in vessel entitled to take her out.

2457. The Board of Commissioners must examine and license, in the manner prescribed, not less than fifteen nor more than twenty pilots for the Port of San Francisco, and not more than two pilots for the Ports of Mare Island, Vallejo, and Benicia. [In effect March 29, 1878.]

Before amendment 1878—special provisions in this and next section for pilots attached to steam tug pilot boats.

San Diego Pilots and Pilot Regulations—Stats. 1872, p. 650.

2458. Pilots must at all times keep, for their exclusive use, boats of such description and good condition as directed by the Board. [In effect March 29, 1878.]

2459. Every pilot in charge of a vessel arriving in the port or harbor of San Francisco, must safely moor the vessel in such position as the master of the vessel or Harbormaster may direct. He must prevent all persons (except officers of the State or Federal Governments, owners or consignees of the vessel or cargo, and persons admitted on the express order of the master) from boarding such vessel until she has been safely moored. To enforce the provisions of this section, and other police regulations for the harbor, every pilot in charge of a vessel entering the harbor of San Francisco is authorized and empowered to arrest every one who, in opposition to the master's orders, persists in boarding such vessel, or who, having boarded her, refuses to leave on the command of such master or pilot; when so arrested he must be immediately brought before the Police Judge's Court, or admitted to bail, as provided in the Penal Code.

Basis of section—Stats. 1870, p. 347.

Bail—Penal Code, §§ 1268–1317.

2460. Every pilot of the harbors of San Francisco, Mare Island, Vallejo, and Benicia, must, once in each month, render to the Board an account of all moneys received by him, or by any other person for him, or on his account, and pay five per cent. thereof to the Board, in full compensation for its official services, for the services of its Secretary and Treasurer, and all incidental expenses.

Basis of section—and next four sections, Stats. 1870, p. 347.

2461. The Board has power summarily to suspend pilots for misconduct, inattention to their duty, intoxication, or violation of any of the rules and regulations provided by the

Board for the government of pilots, and to revoke the license of pilots for the causes hereinafter mentioned, upon due proof thereof, as hereinafter provided. The Board must immediately suspend every pilot complained of until the complaint is investigated and decided.

2462. Any pilot may be deprived of his license before its expiration for the following causes only:

1. For neglect, for thirty days after the same becomes due, as provided in the second preceding section, to render an account to the Board of Pilot Commissioners of all moneys received by him for pilotage;
2. For neglect, for thirty days after the same becomes due, to pay over to the Board the five per cent. on the pilotage money received by him;
3. For rendering to the Board a false account of pilotage received;
4. For absenting himself from duty for more than one month at any one time, except upon leave granted by the Board, or by reason of sickness or personal injury;
5. For refusing to exhibit his license when requested to do so by the master of any vessel he may have boarded;
6. For habitual or occasional intoxication, whether the same occurs while in charge of any vessel as pilot or in charge of a pilot boat, or at any other time;
7. For negligently, ignorantly, or wilfully running any vessel on shore, or otherwise rendering her liable to injury. Any pilot deprived of his license under this subdivision is thereafter ineligible to receive a license as pilot.
8. For willful violation of the rules and regulations adopted by the Board of Commissioners for the government of pilots.

2463. No complaint against any pilot for any of the charges specified in the preceding section must be entertained by the Board, unless it is within the knowledge of the Commissioners, or reduced to writing and verified, as in civil actions. When a written complaint is filed, the pilot accused must be forthwith served with a copy thereof by the Secretary, and required to appear and answer within ten days thereafter. If, upon the hearing of a complaint and the testimony in relation thereto, the Board adjudges the complaint well founded, and the pilot guilty of any of the acts or causes herein declared sufficient for depriving him of his license, the Board must by order so declare, and forthwith revoke his license. Such order must be entered of record in the minutes by the Secretary.

2464. Whenever any pilot has been notified that his license will not be renewed, as provided in section two thou-

sand four hundred and thirty of this Code, he shall be entitled to a trial and hearing thereon, in the same manner that other charges and complaints are tried under the provisions of section two thousand four hundred and sixty-three of this Code; and in all such cases, and in all cases of revocation of license, or suspension of a pilot for any cause, the Board may, in its discretion, upon written application, setting forth the grounds thereof, verified by the party aggrieved, grant a rehearing; and in all cases the final decision of the Board shall be subject to review in the Superior Court of the City and County of San Francisco, to which Court any such case, with all the papers and proceedings therein, shall be immediately certified by the Secretary of said Board, when so required by the pilot interested therein. Any case so certified to the Superior Court shall be then tried de novo. The judgment of the Court shall be final and conclusive. If the decision of the Board be reversed, the judgment shall operate directly to restore the pilot to all his former rights, status, and privileges, without further action of the Board. But the Board shall, nevertheless, upon being served with a certified copy of such judgment, restore or renew the license of such pilot, as the judgment may direct. [In effect March 14, 1881.]

Superior Court—read County Court, before amdt. 1881.

2465. The pilotage inside the Heads to the anchorage opposite San Francisco and about the harbor, or between the harbor of San Francisco and the ports of Mare Island, Vallejo, or Benicia, must be at such rates as agreed on between the parties, not to exceed five dollars per foot draught.

Basis of section—Stats. 1870, p. 349.

2466. The following shall be the rates of pilotage into or out of the harbor of San Francisco. All vessels under five hundred tons, five dollars per foot draught; all vessels over five hundred tons, five dollars per foot draught, and four cents per ton for each and every ton registered measurement. When a vessel is spoken, inward or outward bound, and the services of a pilot are declined, one-half of the above rates shall be paid. In all cases where inward bound vessels are not spoken until inside of the bar, the rates of pilotage and one-half pilotage above provided shall be reduced fifty per cent. Vessels engaged in the whaling or fishing trades shall be exempt from all pilotage, except where a pilot is actually employed. [In effect March 29, 1878.]

Half pilotage—see note to subd. 4 of § 2436.

2467. Any vessel in tow of a steam-tug, between the harbor of San Francisco and the Ports of Mare Island, Vallejo, or

Benicia, shall be exempt from all charges for pilotage, unless a pilot be actually employed. [In effect March 29, 1878.]

Basis of section—Stats. 1870, p. 349.

2468. All vessels coasting between San Francisco and any port in Oregon, or in Washington or Alaska Territories, and all vessels coasting between the ports of this State, are exempt from all charges for pilotage, unless a pilot be actually employed. [In effect March 29, 1878.]

Before Amendment 1878—provision as to steam tug pilot boat.

2469. When two or more pilots shall offer their services to any vessel inward bound, the pilot first offering, or one connected with the same boat, shall have preference, and if the services of another be accepted, the vessel, her appurtenances, and the master and owner thereof, shall be jointly and severally liable to the pilot entitled to such preference for one-half the amount of pilotage he would have been entitled to had his services been accepted. [In effect March 29, 1878.]

Section added—by amdt. 1878.

2470. Any pilot bringing a vessel into the harbor of San Francisco (or one connected with his boat) shall be entitled to take such vessel to sea again when she next departs; *provided*, such pilot and those connected with his boat have not in the meantime become in any manner disqualified or incapacitated; and if such preference be disregarded by the master of such vessel, the vessel, master, and owner shall be liable to the pilot entitled to such prefereuce for one-half the amount to which he would be entitled if his services had been accepted. [In effect March 29, 1878.]

Section added—by amdt. 1878.

ARTICLE VII.

PILOT REGULATIONS FOR HUMBOLDT BAY AND BAR.

§ 2476. Board to appoint and remove pilots.
§ 2477. To make rules to govern themselves and pilots.
§ 2478. Pilots to be attached to steamboats. Damages.
§ 2479. Pilot having priority.
§ 2480. Pilotage and towage.
§ 2481. Pilot responsible for loss or detention of vessel.
§ 2482. Commissioners to recover forfeitures, etc.
§ 2483. Compensation of Commissioners.
§ 2484. Secretary to publish receipts.
§ 2485. Pilots to observe regulations.
§ 2486. License, how forfeited.
§ 2487. Pilot losing vessel.
§ 2488. Extra services.

§ 2489. Full pilotage.
§ 2490. Further fees.
§ 2491. Claims against Board.

2476. The Humboldt Board may appoint for Humboldt Bay and Bar such number of pilots as are necessary, subject to be removed by the Board at any time.

Basis of article—Stats. 1867, p. 75 *et seq.*

San Diego Pilots and Pilot Regulations—Stats. 1872., p. 650.

2477. The Commissioners may make by-laws and rules for their own government and for the government of the pilots, and fix penalties for the breach of the same; a copy whereof they must furnish each pilot appointed. They may also suspend or revoke the licenses of pilots appointed by them, for incapacity or misconduct.

2478. All pilots licensed or appointed for Humboldt Bay must be attached to a steamboat well furnished and fitted for the service, having the necessary hawsers and spring lines suitable to cross and tow vessels over Humboldt Bar in ordinarily rough weather. Any damage to a vessel in tow of a pilot boat, resulting from negligence or carelessness, may be recovered of the pilot boat, its owners, or the pilots in charge thereof at the time the injury occurred; they are jointly and severally liable therefor.

2479. The pilot who brings any vessel into the port has priority in piloting or towing the same out; and the master of the vessel outward bound must apply for pilotage or towage on board the pilot boat which brought the vessel in, and tender the pilotage or towage fee. Such pilot, or a suitable substitute, must immediately render the required service, and for a failure so to do forfeits his appointment. If the pilot, in bringing the vessel in, was guilty of negligence or carelessness, he thereby forfeits his right of priority.

2480. The following fees are collectable by the pilots of Humboldt Bay:

1. For piloting vessels, eight dollars per foot draught.
2. For towage, an amount to be agreed upon between the parties.

2481. If any vessel bound for Humboldt Bay is lost or unnecessarily detained for want of a pilot or steam tug boat, after raising a signal for a pilot within eight miles of the bar at the entrance of the bay, the pilots may be suspended or displaced by the Commissioners; and those guilty of negligence or inattention must pay to the Commissioners a sum not ex-

ceeding five hundred dollars, to be recovered in a suit by them, and are liable to the owners of the lost or detained vessel in the amount of damage resulting from such negligence or inattention. The Commissioners must publish all proceedings had in such cases.

2482. The Commissioners must sue for and recover all penalties and forfeitures from pilots, masters, or owners of vessels, or other persons, or from the vessels violating any of the provisions of this article. The money so collected must be paid into the County Treasury of Humboldt County, for the use of the public schools, the Commissioners first deducting therefrom, if sufficient, enough to defray their salaries and necessary expenses.

2483. The Commissioners must each receive the sum of four dollars per day for each day actually employed in the discharge of their duties, and all necessary expenses for stationery, lights, and fuel used in their office, which sum must be deducted from the moneys received by them before depositing the same in the County Treasury.

2484. On the first week in January of each year, the Secretary of the Board must cause to be published in a newspaper published in Humboldt County, a full account of all the receipts and expenditures for the year previous.

2485. The Commissioners of Humboldt Bay and Bar must strictly observe and enforce the following regulations:

1. A pilot absenting himself from his duty for more than two months forfeits his license.
2. Each pilot must apply for a renewal of his license ten days before the expiration thereof, otherwise it must not necessarily be renewed.
3. If a pilot becomes intoxicated while in charge of a vessel as pilot, he must be suspended or dismissed and his license withdrawn.

2486. Licenses of pilots are forfeited, and must be withdrawn by the Board of Commissioners in the following cases:

1. A failure to renew his bond or sureties when required by the Board.
2. Willful violation of any duty prescribed by law, or a regulation of the Board.
3. Negligently losing a vessel.
4. Mental derangement.
5. Habitual drunkenness.

Notice of any charge must be given to the pilot accused, and an opportunity to defend himself given before his removal.

2487. A pilot negligently losing a vessel must not thereafter receive a license as a pilot, and is liable for all damages sustained in consequence of such neglect. If a pilot negligently runs a vessel on shore, he must receive no pilotage; and he is liable on his bond for all damages sustained.

2488. The master, owner, or consignee of any vessel to whom any pilot may have rendered, upon request of either of them, any extra service for the preservation of such vessel while in distress, must pay such pilot, in addition to his regular fees, such amount as the Commissioners determine to be a reasonable and just reward, if no special agreement has been made between such master, owner, or consignee of such vessel and the pilot.

2489. A pilot boarding any vessel displaying a signal for a pilot is entitled to receive full pilotage.

2490. The Commissioners are entitled to charge for each license to a pilot a sum not exceeding fifty dollars; and any master of a coasting vessel, being an American citizen, can, upon application to the Pilot Commissioners, obtain a special license for the use of such vessel only, by paying the Commissioners for the same at the rate of one dollar per ton; all such vessels must be under one hundred and seventy-five tons burden.

2491. All claims against the Commissioners must be considered at a stated meeting, and if correct must be allowed and paid.

ARTICLE VIII.

PORT WARDENS.

§ 2501. Number of Port Wardens.
§ 2502. Board for San Francisco.
§ 2503. Duty of Wardens.
§ 2504. To keep open record.
§ 2505. Surveys, and what same must set forth.
§ 2506. May call assistance, but no charge therefor.
§ 2507. Sales of wrecks, etc., and merchandise for foreign underwriters.
§ 2508. Notice of sale, how given.
§ 2509. Wardens not to be connected with insurance.
§ 2510. Fees for surveys and certificates.
§ 2511. Penalty for acting as Port Warden.

2501. There are four Port Wardens for the port and harbor of San Francisco, and one for each and every other port of entry within this State.

2502. Of the Wardens appointed in San Francisco two or more must be master mariners. They must act in concert in the discharge of their duties, and are known as the Board of Port Wardens for the port of San Francisco.

2503. The Port Wardens, when required by any person interested in either vessel or cargo, must survey any vessel arriving in distress, or which has sustained damage or injury at sea, and survey in whole or in part the cargo thereof; and must survey the hatches, stowage, and cargo of all vessels laden with general or assorted merchandise belonging or consigned to various parties.

2504. They must keep in a book provided for such purpose a record of all surveys, signed by the Warden making the survey, at all times open for inspection by any person interested in the vessel or cargo surveyed, of which all persons requiring them must be furnished with copies certified under the hand of the Warden or one of the Board of Wardens and seal of the Board, on payment of the fee therefor.

2505. In all surveys made by a Port Warden he must set forth clearly and fully the nature of the damage; if of merchandise, whether from actual contact with sea water or through the excess of water in the hold of the vessel, or from the humidity or sweat of the hold, bad stowage, or from such other cause by which in his judgment the damage has been occasioned. If the survey is of a damaged vessel he must give a full account of all the loss and injury which she has sustained, and recommend the repairs. He must state the value of the vessel in her damaged condition, and also the value of the repairs recommended, setting forth what parts are to be supplied anew and what parts to be put in repair.

2506. Whenever a Port Warden deems it necessary he may call to his assistance, on a survey, a ship carpenter, rigger, sailmaker, or other person practically acquainted with the merchandise to be surveyed or parts of the vessel to be repaired, who must be sworn to examine properly and to render with the Warden a correct and faithful report of the surveys. No additional charge must be made therefor to the vessel unless their survey is required by the owner or agent thereof.

2507. All wrecked or damaged vessels, or materials from the same, and all merchandise sold at public auction for account of underwriters residing abroad, when required by any party having an interest in the same, or for account of whom it may concern, or upon which claims are to be made against underwriters residing abroad, must be sold under the inspection of a Warden of the port where such sale is made. And the Warden must separate sound goods from those damaged, and certify specially the nature, and, as far as can be done, the extent of such damage. No Port Warden has authority to sell or dispose of any property that may have been surveyed by him without the consent of the owner or agent of the same; nor when the settlement of losses has been agreed upon in writing by the parties interested and a copy thereof given to the Warden.

Marine Insurance—Civil Code, §§ 2655-2746. Loss, Civil Code, §§ 2701-2712. Abandonment, Civil Code, §§ 2716-2732. Measure of indemnity, Civil Code, §§ 2736-2746.

2508. In case sales are made at auction under the direction of the Port Warden, he must give at least three days' notice of the same by publication in some newspaper published in the county where the survey is made, describing the articles to be sold; and if merchandise, the vessel by which imported; and if a wrecked or damaged vessel or materials of the same, the name of the vessel and where from. If no newspaper is published in the place where the sale is made, then a written notice of such sale must be posted up in the vicinity.

2509. No Port Warden must, either directly or indirectly, have any connection with insurers of this State, or of any other of the States, or of foreign countries, or with the agents or representatives of such insurers, so far as his duties as Port Warden are concerned. He must not in any manner be interested, directly or indirectly, in any repairs he may recommend, nor in any vessel, cargo, or portion of cargo he may be required to survey.

2510. For each and every survey the Port Warden is entitled to fifteen dollars, to be paid by the owners, masters, or consignees, the amount not to exceed altogether for any one vessel the sum of seventy-five dollars. Foreign vessels, not admitted by treaty on terms of equality with American bottoms, must pay fifty per cent. advance on this rate. For all separate certificates of surveys required by different consignees he is entitled to a fee of two dollars and a half, and for each order of sale he is entitled to ten dollars.

2511. Any person other than a Port Warden, appointed

according to law, who performs any of the duties of such officer prescribed in this article is liable to a penalty of not less than five hundred dollars nor more than one thousand dollars for each offense, to be recovered in any Court of competent jurisdiction by the Warden or Board of Port Wardens, in the name of the people of the State of California.

Basis of section—Stats. 1853, p. 44.

Exercising functions of office wrongfully—Penal Code, § 75.

ARTICLE IX.

SAN FRANCISCO HARBOR AND STATE HARBOR COMMISSIONERS.

§ 2520. Appointment of State Harbor Commissioners.
§ 2521. Qualification of Commissioners. Officers of Board. Duties of Secretary.
§ 2522. Employés and their duties.
§ 2523. Actions for property, money, and removal of obstructions.
§ 2524. San Francisco water front under control of Commissioners.
§ 2525. Extension and supervision of streets along water front.
§ 2526. Limit of money to be collected.
§ 2527. Requisites of valid contract.
§ 2528. Disposition of moneys collected.
§ 2529. Vouchers, drafts and warrants.
§ 2530. Reports and receipts.
§ 2531. Ex officio members of Board.
§ 2532. New sea wall for San Francisco Harbor.
§ 2533. San Francisco Harbor Improvement Fund.
§ 2534. Limit of compensation for collecting dockage, etc.
§ 2535. State Treasurer's receipts, disbursements, and account books.
§ 2536. Proposals and contracts for construction of new sea wall.
§ 2537. Report of Commissioners to Governor.
§ 2538. Maps of changes in lines of water front or streets.
§ 2539. Office and duties of Chief Wharfinger.
§ 2540. Duties of Chief Wharfinger as to abandoned water craft and boats adrift.
§ 2541. Failure to obey orders of Chief Wharfinger.
§ 2542. Obstructions to navigation.
§ 2543. Fast driving on wharves prohibited.
§ 2544. Police Judge's Court to try misdemeanors hereunder.
§ 2545. Qualifications of officers.
§ 2546. Obligee on official bonds.
§ 2547. Seal.
§ 2548. When no tolls or wharfage to be collected.
§ 2549. Collections and payments in gold and silver coin only.
§ 2550. Wharfingers and collectors as special policemen.
§ 2551. Pending actions and proceedings not affected.
§ 2552. Salaries of officers.
§ 2553. Duties of Attorney General.
§ 2554. Office rooms. (Repealed.)

2520. As soon as may be after the passage of this Act, the Governor, by and with the consent of the Senate, shall appoint three State Harbor Commissioners, who shall hold office, one for two years, one for three years, and one for four years, from the date of their respective commissions. The Governor

shall, in like manner, at the expiration of their respective terms, appoint and commission their successors, for a full term of four years, excepting in case of a vacancy occurring in the Board by resignation, or otherwise, to fill which he shall appoint a Commissioner for the unexpired portion of the term. [In effect February 28, 1876.]

Harbor Commissioners—mode of election and appointment, reference hereto, § 362; ex officio members, § 2531.

Article reconstructed—entirely, by amdts. 1876.

Member of Legislature—appointment of to office of Harbor Commissioner not prohibited by Constitution, when office not created nor emoluments increased during Legislator's term of office, 63 Cal. 660.

Before this section enacted—Held that no statute authorizing election to fill vacancy in Board, 47 Cal 447.

2521. The Governor shall issue commissions to each member of the State Board of Harbor Commissioners, which commissions shall take effect immediately after such Commissioners shall have filed bonds and qualified, as in this article provided. Each Commissioner shall, before entering upon the duties of his office, and within fifteen days after his appointment, give a bond in the sum of fifty thousand dollars, conditioned for the faithful performance of his duties, required by this article, which bond shall be approved by the Governor and State Treasurer, by writing indorsed thereon, and filed in the office of Secretary of State. No bond shall be required of the ex officio members of the Board. The Commissioners shall not be sureties for each other, nor shall any officer of the State Government, nor officer or member of the Legislature be accepted as surety on said bonds. The Commissioners shall take and subscribe an official oath, which oath shall be attached to and filed with said bonds respectively. The Commissioners shall be known as the Board of State Harbor Commissioners; and after being qualified, shall choose, by ballot, one of their own number President of the Board. The Commissioners shall appoint as Secretary of the Board some suitable person, who is not one of their own number, who, before entering upon the duties of his office, shall give a bond, with two or more sureties, in the sum of twenty thousand dollars, conditioned for the faithful performance of his duties; which bond must be approved by the Commissioners, by writing indorsed thereon, and he shall also take and subscribe to an official oath, which oath shall be attached to and filed with his bond with the Secretary of State. The Commissioners shall appoint an Assistant Secretary, who shall give a bond in the sum of ten thousand dollars, with two or more sureties, conditioned for the faithful performance of his duties, which bond shall be approved by the Commissioners, in writing indorsed thereon, and shall also take and subscribe

an official oath, which oath shall be attached to and filed with his bond, with the Secretary of State. The Secretary of the Board shall keep the office of the Board open every day, from nine o'clock A. M. till four o'clock P. M., Sundays and holidays excepted. He shall attend the meetings of the Board, and record the names of all the Commissioners present, and shall keep a clear and distinct record of all their proceedings at every meeting. He shall keep in suitable books a record of all moneys received and disbursed by the Commissioners, and of all agreements and contracts entered into by them, which record shall be open to the inspection of the public during the usual business hours. The Secretary shall forward to the Controller of State, as often as once in each month, a statement, under oath, in the form of a balance sheet, containing a full exhibit of all moneys received and disbursed; the sources from which the same were received, and the purposes for which the same were paid out. He shall also, in the first week in January, April, July, and October, in each year, file in the office of the Secretary of State a report, in the form of a balance sheet, under oath, of the receipts and disbursements for each preceding three months. He shall keep in separate books a record of all the personal property, and the cost of the same, purchased by the Commissioners in behalf of the State, and the disposition made of the same, when any shall have been sold, and the price received therefor. He shall perform such other duties properly pertaining to those of Secretary as may be required of him by the Board. The Assistant Secretary shall perform such service pertaining to the duties of his office as the Secretary or Commissioners may require during business hours. [In effect February 28, 1876.]

Commissions—issued by Governor, §§ 891-892.

Official bonds—generally, §§ 947-986; required by this article to be to people of State, § 2546.

Duties of member of Board—violation of, 45 Cal. 199.

Provisions as to bond of Commissioners—founded on Stats. 1863, p. 406: 1863-4, p. 138.

Ex officio members of Board—§ 2531.

Official oath—§§ 904-910.

Seal of Board—§ 2547.

Qualifications of Officers—§ 2545.

2522. The Commissioners may appoint a Chief Engineer, whose duty it shall be to superintend the construction of all embankments and sea walls, the dredging of slips and docks, the building of wharves, piers, quays and landings, thoroughfares, and other necessary structures, upon the premises and under the control of said Commissioners, by virtue of this article. They may also, in their discretion, employ assistant

engineers and draughtsmen, who shall be under the control and subject to the directions of the Chief Engineer, and pay a reasonable compensation for such services. They may appoint an attorney-at-law, who shall attend to the prosecution and defense of all suits and other matters requiring his professional services, and give counsel and advice when required by the Board. They shall appoint as Chief Wharfinger a competent man, who must, before entering upon the duties of his office, file, in the office of the Board, a bond, with two or more sureties, in a sum sufficient to cover any amount of money that shall come into his hands, conditioned for the faithful performance of his duties as such Chief Wharfinger, which bond, if satisfactory, shall be approved by the Board by writing indorsed thereon. Such Chief Wharfinger shall, under the direction of the Commissioners, furnish to all shipmasters, consignees and pilots of all ships and other water craft, a printed copy of the harbor regulations of the harbor of San Francisco, which shall contain the rates of dockage, wharfage, and tolls, and such other matters as said Commissioners shall deem proper to furnish to shipmasters, consignees and pilots, to give them a correct knowledge of the regulations of said harbor; such printed copies of harbor regulations to be furnished to said Chief Wharfinger by said Commissioners. The Chief Wharfinger shall also, subject to the directions of the Board, superintend and direct the removal of all incumbrances and obstructions from the docks, slips, wharves, landings and thoroughfares, and shall have, subject to the directions of the Commissioners, as aforesaid, authority to station, berth and regulate the position of all classes of water craft navigating said harbor, and to remove from time to time, and from place to place, such water craft as the wants of commerce and good order may require; *provided, however*, that said Chief Wharfinger shall have no control over such portions of the water front of said city and county as are held by grantees or lessees, or their assigns, under valid leases. Said Commissioners may also appoint an Assistant Chief Wharfinger, who shall perform such duties pertaining to his office as shall be required of him by said Commissioners, and by said Chief Wharfinger. Said Assistant Chief Wharfinger must, before entering upon the duties of his office, file, in the office of the Board, a bond, with two or more sureties, in a sum sufficient to cover all moneys that may come into his hands, conditioned for the faithful performance of his duties as Assistant Chief Wharfinger, which bond shall be approved by the Board by writing indorsed thereon. Said Commissioners shall also appoint a sufficient number of persons Wharfingers to collect the revenue arising from dockage, wharfage, cranage, rents and tolls, by authority of this article, and may also appoint a sufficient number of persons Toll Collectors to collect the tolls author-

ized to be collected by virtue of this article; each of which Wharfingers and Toll Collectors must, before entering upon the duties of their respective offices, file, in the office of the Board, a bond, with two or more sureties, in a sum sufficient to cover any moneys that may come into their hands, conditioned for the faithful performance of their duties as such Wharfingers and Toll Collectors, which bonds shall be approved by said Commissioners by writing indorsed thereon. Every Wharfinger and Toll Collector appointed by authority of this article must make and subscribe to an official oath, which oath must be attached to and filed with his bond. The Secretary of the Board is hereby authorized to administer to each Wharfinger and Toll Collector the oaths required by this article to be made by such Wharfingers and Toll Collectors. Each Wharfinger and Toll Collector shall keep, in suitable books to be furnished by the Commissioners, an account of all moneys by him collected, which books shall be open to the inspection of the public at all reasonable times, and such Wharfingers and Toll Collectors shall pay to the Commissioners all the moneys collected by them, at least once in each week, and as much oftener as the Commissioners shall require. The Wharfingers appointed by authority of this article shall have authority, respectively, and they are hereby authorized, to require the captain, consignees, agents, or owners of any water craft, or the owners, agents, managers, or conductors of any railroad car or train of cars, or the consignees of any goods, wares or merchandise, or animals, to be landed, loaded, or unloaded upon the premises described in this article, on or before the landing, loading, or unloading thereof, to furnish to any such Wharfingers, when required to do so, the number of tons, or number of hundred, or number of feet, or number of cords, or number of animals, any such water craft, or car, or train of cars, contains; and it shall be the duty of every captain, consignee, agent, or owner of any water craft, or the owners, agents, managers, or conductors of every railroad car or train of cars, the consignee of any goods, wares, merchandise, or animals, upon any railroad car or train of cars, which goods, wares, merchandise, or animals are to be landed, loaded or unloaded within or upon the premises described in this article, to furnish to such Wharfinger a correct account of the number of tons, or the number of hundreds, or number of feet of goods, wares, or merchandise, or number of animals, when required to do so by any Wharfinger; and every captain, consignee, agent, or owner of any water craft, or any owner, agent, manager, or conductor of any railroad car or train of cars, or any consignee of any goods, wares, merchandise, or animals, upon any railroad car or train of railroad cars, who shall neglect or refuse to furnish the information required to be given to the Wharfingers by this section, or who shall, de-

signedly, give false information, shall be guilty of a misdemeanor, and, upon conviction thereof before any Court of competent jurisdiction, shall be fined not less than twenty nor more than one hundred dollars, or by imprisonment in the jail of the City and County of San Francisco not less than ten nor more than fifty days, or by both such fine and imprisonment. [In effect February 28, 1876.]

Chief Wharfinger—office, powers and duties, §§ 2539-2541.

Official Bonds and oath—§ 2521, notes.

Removal of obstructions—§§ 2523, 2542.

Wharfingers and Collectors—To be special policemen, § 2550.

2523. The Commissioners may institute and prosecute to final judgment, actions in the name of the people of the State of California, for the possession of any portion of the premises described in this article, situate between the inshore line, or line nearest the main land, and the line offshore six hundred and fifty feet therefrom, and parallel therewith, or for the annulling of any lease or contract entered into by the Commissioners in behalf of the State, by virtue of any general or special law, or for the collection of any money due, or that may become due the State by authority of this article; and the Commissioners may also institute and prosecute to final judgment, actions for the removal of all unlawful obstructions in or upon said premises, or for the removal of all unlawful obstructions in or upon the streets through the centre of which the inshore line, or line nearest the main land, bounding said premises, runs. They may also remove any unlawful obstructions thereon after the owner, possessor, or occupant of such obstructions shall have five days' notice, in writing, to remove the same, either served on such owner, possessor, or occupant, or posted upon said obstruction by the Chief Wharfinger, Assistant Wharfinger, or Wharfinger. [In effect February 28, 1876.]

Pending actions—and proceedings, prosecution of not affected by amndts. 1876, see § 2551.

Moneys collected—disposition of, § 2528.

Actions in rem for wharfage—authorized under similar statute, 34 Cal. 676.

Obstructions—to navigation forbidden, § 2542; Chief Wharfinger to direct removal of, § 2522.

2524. The Commissioners shall have possession and control of that portion of the Bay of San Francisco, together with the improvements, rights, privileges, easements, and appurtenances connected therewith, or in any wise appertaining thereto, for the purposes in this article provided (excepting such parcels thereof as are held by the lessees, or their assigns, of valid leases, which parcels so held it is hereby made

the duty of the Commissioners to take possession of, together with the improvements thereon, as soon as said leases terminate; and also to see that the lessees, or their successors or assigns, do not exercise rights and privileges that are not conferred by said leases), bounded as follows, to wit: Commencing at the point where the easterly line of the Presidio Reservation intersects the water-line front, as established by the Board of State Tide Land Commissioners; thence easterly along said water-line front to the center of Webster street; thence southerly along the center of Webster street to the center of Lewis street; thence easterly along the center of Lewis street to the center of Polk street; thence southerly along the center of Polk street to the center of Tonquin street; thence easterly along the center of Tonquin street to the center of Larkin street; thence southerly along the center of Larkin street to the center of Jefferson street; thence easterly along the center of Jefferson street to the center of Powell street; thence southerly along the center of Powell street to the center of Beach street; thence easterly along the center of Beach street to the center of Dupont street; thence southerly along the center of Dupont street to the center of North Point street; thence easterly along the center of North Point street to the center of Kearny street; thence southerly along the center of Kearny street to the center of Francisco street; thence easterly along the center of Francisco street to the center of Montgomery street; thence along the center of Montgomery street to the center of Chestnut street; thence easterly along the center of Chestnut street to the center of Sansome street; then southerly along the center of Sansome street to the center of Lombard street; thence easterly along the center of Lombard street to the center of Battery street; thence southerly along the center of Battery street to the center of Greenwich street; thence easterly along the center of Greenwich street to the center of Front street; thence southerly along the center of Front street to the center of Vallejo street; thence easterly along the center of Vallejo street to the center of Davis street; thence southerly along the center of Davis street to the center of Pacific street; thence easterly along the center of Pacific street to the center of East street; thence southerly along the center of East street to the center of Folsom street; thence westerly along the center of Folsom street to the center of Stuart street; thence southerly along the center of Stuart street to the center of Harrison street; thence southerly on a direct line with said Stuart street, two hundred and fifty-three feet nine inches, to the center of a street, the name of which is not on a map; thence at right angles, westerly, along the center of said street to the center of Spear street; thence southerly along the center of Spear street to the center of Bryant street; thence westerly along the

center of Bryant street to the center of Beale street; thence southerly along the center of Beale street to the center of Brannan street; thence westerly along the center of Brannan street to the center of First street; thence southerly along the center of First street to the center of Townsend street; thence westerly along the center of Townsend street, five hundred and fifty feet, to the center of a street, the name of which is not on a map; thence at right angles southerly along the center of said street to the center of King street; thence along the center of King street to the center of Second street; thence southerly along the center of Second street to the center of Berry street; thence westerly along the center of Berry street to the center of Third street; thence southerly along the center of Third street to the northerly line of Channel street; thence westerly along the last-mentioned line to the easterly line of Fifth street; thence southerly along said last-mentioned line to the southerly line of said Channel street; thence easterly along said mentioned line to the center of Kentucky street; thence southerly along the center of Kentucky street to the center of Fourth street; thence along the center of Fourth street to the center of Louisiana street; thence southerly along the center of Louisiana street to the center of El Dorado street; thence along the center of El Dorado street to the center of Illinois street; thence southerly along the center of Illinois street to the center of Solano street; thence easterly along the center of Solano street to the water-front line established by the Board of State Tide Land Commissioners; thence southerly along said last-mentioned line to the center of Tulare street; thence westerly along the center of Tulare street to the center of Texas street; thence southerly along the center of Texas street to the center of Islais street; thence easterly along the center of Islais street to the center of Water-front street; thence southerly along the center of Water-front street to the center of India street; thence westerly, southerly, and easterly, along the center of said India street to the center of Water-front street, to the center of China street; thence westerly along the center of China street to the center of Third avenue; thence southerly along the center of Third avenue to the northerly line of the property of the California Dry Dock Company; thence easterly along said last-mentioned line to the water front established by the Board of State Tide Land Commissioners; thence southerly along and around said Dry Dock Company's land to the southeasterly corner thereof; thence westerly along the line of said land to the center of Water-front street; thence southerly along the center of Water-front street to the center of Nineteenth avenue; thence westerly along the center of Nineteenth avenue to the center of Dock street; thence southerly along the line of Dock street to the center of Twenty-third avenue; thence westerly along

the center of Twenty-third avenue to the center of H street; thence southerly along the center of H street to the center of Twenty-fourth avenue; thence easterly along the center of Twenty-fourth avenue to the center of Water-front street, and thence southerly along the center of said Water-front street to the southern boundary of the County of San Francisco; thence along the southerly, easterly, and northerly boundary lines of said county, to a point due north of the place of commencement, and thence south to the place of commencement. But no harbor embankment or sea-wall shall be constructed outside of the following named points and lines, to wit: Commencing at the point where the eastern boundary line of the Presidio Reservation, extended in a northerly direction, intersects the three-fathom contour line, shown upon the charts of the United States survey, and running thence in an easterly and southerly direction upon straight or curved lines, in such manner as to approach as near as practicable the extreme outer projections of the water-line front as described in an Act to provide for the disposition of certain property of the State of California, passed March twenty-sixth, A. D. eighteen hundred and fifty-one, to a point at or near the intersection of Second and Berry streets; thence continuing southerly, upon straight or curved lines, in such a manner as to approach as near as practicable the extreme outer projections of the water-line front, as established by the Board of State Tide Land Commissioners, to the southern boundary of said City and County of San Francisco. And said Commissioners, in addition to a general control over said premises, shall have authority to use, for loading and landing merchandise, with a right to collect dockage, wharfage and tolls thereon, such portion of the streets of the City and County of San Francisco ending or fronting upon the waters of said bay as may be used for such purposes without obstructing the same as thoroughfares, and authority to rent an office in the City and County of San Francisco, between Montgomery, Market, and Pacific streets, and the city front; and purchase from time to time suitable books for the records of the Secretary and accounts of the Wharfingers, together with such stationery as may be required by the Board, and to fix and regulate from time to time the rates of dockage, wharfage, cranage, tolls, and rents, and collect such an amount of revenue therefrom as will enable the Commissioners to perform the duties required of them by authority of this article. And the Commissioners and Mayor of San Francisco may so modify and establish such rates of dockage and wharfage as will produce a revenue not to exceed in amount the moneys collected in the year eighteen hundred and seventy-five, collecting as near as possible equal amounts from dockage and wharfage. When such modification has been made, the collection of tolls must be abolished,

and the Toll Collectors discharged. The Commissioners shall construct such number of wharves as the wants of commerce shall require, and shall locate such wharves at such points and upon such lines as the Board may deem most suitable for the best interest of commerce; and shall repair and maintain all the wharves, piers, quays, landings, and thoroughfares the wants of commerce may require, and generally to erect all such improvements as may be necessary for the safe landing, loading, and unloading, and protection of all classes of merchandise, and for the safety and convenience of passengers passing into and out of the City and County of San Francisco by water. But no wharf shall be extended into the bay more than six hundred feet beyond the inside line, or line nearest the shore of the City and County of San Francisco, described in this article, or more than six hundred feet beyond the permanent water-front line when established under the provisions of this article, nor shall any such wharf be constructed upon such place or line as will cause any slip or dock to be less than one hundred and thirty-six feet wide at the most narrow point between the wharves. When they determine that a new wharf shall be erected, or any other necessary improvement constructed, or repairs made, or dredging machines, scows, steam-tugs, and any necessary machinery, the cost of which shall exceed three thousand dollars, they shall advertise for sealed proposals, for a period of not less than ten days, in one or more of the daily newspapers in the City and County of San Francisco. Every proposal shall be accompanied by a certified check for an amount equal to five per cent. of the amount of such proposal, such check to be made payable to the order of the Secretary of said Board, conditioned, if the proposal [is] accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be paid into the State Treasury, by said Secretary, as liquidated damages for such failure and neglect, as a portion of San Francisco Harbor Improvement Fund. Such advertisement shall contain a general description of the work to be done, the materials to be used, the place where to be used, and must refer to specifications, which must contain a full and accurate description of the work to be performed, the material to be used, and where to be used; which specifications shall be kept in the office of the Secretary of the Board in such manner that all persons may inspect the same during the usual business hours of all days except Sundays and holidays. On a day named in the advertisement, the Commissioners shall open the bids in the presence of such bidders as are present, and award the contract to the lowest bidder who shall furnish sufficient sureties to guarantee the performance

of the work. If, in the opinion of the Commissioners, the bids are too high, they may reject them and advertise anew, in like manner as before. If, in the opinion of the Commissioners, the second bids are too high, they may reject them likewise, and enter into contract with responsible parties, without giving further notice. Any contract entered into without giving public notice and receiving bids, must be at least ten per cent. lower than the lowest rejected bid. The Board may construct such harbor embankment or sea-wall as shall be necessary to protect the harbor of San Francisco, and dredge such number of slips and docks as the commerce of the Port of San Francisco may require, to a depth that will admit of the easy and free ingress and egress of all classes of water craft that load and discharge cargoes at the wharves, piers, quays, landings, and thoroughfares in the harbor of San Francisco; to perform which dredging, the Board of State Harbor Commissioners are hereby authorized and empowered to purchase or construct dredging machines, scows, steam-tugs, and the necessary machinery, and employ men for operating the same. When any portion of the premises described in this article shall be dredged, the sand, mud, or other substance shall be deposited in a place designated by the Board, in not less than fifteen fathoms of water. All classes of water craft that uses or makes fast to any wharf, pier, quay, landing, or thoroughfare, and lands upon or loads therefrom any goods, wares, or merchandise, shall be liable, and must pay to the Commissioners such rates of dockage as shall be fixed by authority of this article; and all such water craft as shall discharge or receive any goods, wares, or merchandise, while moored in any slip, dock, or basin, within the jurisdiction of the Commissioners, shall pay one-half the regular rates of dockage. Any water craft that shall leave any wharf, pier, quay, landing, thoroughfare, slip, dock, or basin, unless forced to do so by stress of weather, without first paying the dockage due from such vessel, shall be liable to pay double the regular rates. The charge for wharfage and tolls shall be a lien upon all goods, wares, and merchandise landed upon any of the wharves, piers, quays, landings, or thoroughfares, upon the premises described in this article; and the Commissioners, their agents or lessees, may hold possession of any such goods, wares, or merchandise, so landed as aforesaid, to secure the payment of such wharfage and tolls; and for the purpose of such lien, are deemed to have possession of such goods, wares, and merchandise, so landed, until such charges for wharfage and tolls are paid. The Commissioners shall have power to make reasonable rules and regulations concerning the control and management of the property of the State, which is intrusted to them by virtue of this article; and said commissioners are hereby authorized and required to make,

without delay, and from time to time, and publish, not less than thirty days, in a daily newspaper of general circulation, published in the City and County of San Francisco, all needful rules and regulations, not inconsistent with the laws of the State or of the United States, in relation to the moving and anchoring of vessels in said harbor, providing and maintaining free, open, and unobstructed passage-ways for steam ferry boats and other steamers navigating the waters of the Bay of San Francisco and the fresh water tributaries of said bay, so that such steamers can conveniently make their trips without impediment from vessels at anchor, or other obstacles. And said Commissioners may also make all needful rules and regulations governing the removal of such vessels from the wharves and other landings, and from slips and docks, as are not engaged in receiving or discharging cargo, prescribing the time during which goods, wares, and merchandise, landed upon any wharf, pier, quay, landing, or thoroughfare, shall be permitted to remain thereon, and may divide the same into several classes, and may, by such rules and regulations, provide that in case any such goods, wares, or merchandise remain upon any wharf, pier, quay, landing, or thoroughfare, beyond the term so prescribed, the respective Wharfinger may, under the order of the Commissioners, remove and deposit the same in a suitable place, at the charge, risk, and expense of the owner thereof. When any goods, wares, or merchandise shall have remained upon any wharf, pier, quay, landing, or thoroughfare, more than twenty-four hours, the Commissioners may, in their discretion, charge such additional rates for each subsequent day as in their opinion is just and equitable. The Commissioners may, in their discretion, set apart and assign, for the exclusive use of the water craft used by the officers of the Federal Government, such convenient and safe landings as such officers may require, together with suitable premises near such landings as may be set apart and assigned for their use, upon which premises such officers may cause to be erected offices and storehouses to suit their convenience, and the Commissioners shall charge a reasonable compensation per month for the use of such landings and office and storehouse premises; set apart and assign a suitable and proper locality for the use of the Harbor Police of the City and County of San Francisco, and, also, a suitable place for a boat house station for the exclusive use of the Quarantine and Health Officers of said city and county, without compensation; set apart and assign for the exclusive use of steam ferry boats suitable slips, in which such structures may be erected as will secure the safe and convenient landing of passengers, and safe landing and delivery of freight; set apart and assign suitable wharves, berths, or landings for the ex-

clusive use of sea-going steamers, to construct suitable sheds, gates, and other temporary structures as may be necessary for the safe and convenient landing of passengers, and safe landing and delivery of freight; and set apart and assign for the sole and exclusive use of the fishermen of the City and County of San Francisco such place or places as the said Commissioners shall deem proper, sufficient, and adapted for the requirements and necessities of said fishermen; *provided*, the premises so set apart by said Commissioners shall be used only for the legitimate business of said fishermen, and for no other purpose; *and provided*, said Commissioners shall not charge therefor more than the following rates: For boats over twenty-two feet and under forty feet long, one dollar per week; for boats from sixteen to twenty-two feet long, seventy-five cents per week; and for all boats less than sixteen feet long, twenty-five cents per week. The Commissioners may assign suitable places for the landing of horses, cattle, sheep, and swine, and when such places have been assigned, it shall be a misdemeanor for a commander of any water craft to land any greater number than ten at any one time from any water craft at any other place. The Commissioners may set apart, for the uses and purposes of dry docks and marine railways, such portions of the water front northwesterly of the northerly end of Kearny street, and southerly of the easterly end of Solano street, as the wants of commerce may require, and lease the same for a period not to exceed ten years. When the Commissioners lease premises for marine railways and dry dock purposes, as provided in this section, they shall advertise for sealed proposals, for a period of not less than ten nor more than twenty days, in one of the daily newspapers of the largest circulation, printed in the City and County of San Francisco, which advertisement shall contain a description of the premises to be leased. On the day named in the advertisement the Commissioners shall open the bids in the presence of such of the bidders as are present, and award the premises to be leased to the highest responsible bidder that shall furnish sufficient sureties to guarantee the payment of the rent, and may negotiate for, and accept, and cancel any lease of any portion of the premises described in this article, and pay a reasonable compensation for any structures upon any such leased premises as, in the opinion of the Board and Engineer, may be useful for such commercial purposes as this article is intended to promote. No person or company shall, without the consent of the Board of State Harbor Commissioners, land or remove any goods, wares, or merchandise, or other thing, upon or from any wharf, pier, quay, landing, or thoroughfare, situate upon the premises described in this article, unless authorized to do so by virtue of valid lease; nor shall any person collect dockage, wharfage, cranage, rent, or toll, within the bounda-

ries of the premises described in this article, except by virtue of valid leases, without first obtaining permission to do so from said Commissioners; nor shall any person or company place, or cause to be placed, any obstructions in that portion of the Bay of San Francisco described in this article, nor upon any wharf, pier, quay, landing, or thoroughfare, without the consent of the Board. Whenever any wharf, pier, quay, landing, or thoroughfare in the harbor of San Francisco shall be incumbered, or their free use interfered with by goods, wares, merchandise, or other substance, whether loose or built upon, or fixed to any such wharf, pier, quay, landing, or thoroughfare, it shall be the duty of the Commissioners to notify, in writing (which notice may be served by a Wharfinger, or by the Secretary, or Assistant Secretary of the Board), the owner, agent, occupant, or person placing or keeping such obstructions thereon, to remove the same within twenty-four hours after the serving of such notice; and in case of failure to comply with such notice, and remove such obstructions, the owner, agent, occupant, or person so notified shall be liable to pay the Commissioners the sum of twenty-five dollars for each and every day during which such obstruction shall remain upon any such wharf, pier, quay, landing, or thoroughfare; and the Commissioners shall have power, in their discretion, to remove any such incumbering substance, and store the same in any suitable, convenient, and safe place, and a sum equal to the amount of the expenses of the removal, together with all other necessary charges, shall be paid by the owner of such incumbering substance to the Commissioners, and such sum and necessary charges shall be a lien on such substance until paid. The rates of dockage, wharfage, and tolls shall not exceed those established by the Board of State Harbor Commissioners, July first, eighteen hundred and seventy-four, and dockage shall not be collected on any vessel lying at anchor outside of dock, wharf, or slip. [In effect February 28, 1876.]

Water front—line of, as fixed by sea wall, Stats. 1878, p. 263; under former statute, 41 Cal. 263; extension of streets along, § 2525; compromise of certain litigation concerning a portion of (between Jackson and Pacific streets, outside of water front line of 1851), authorized by Stats. 1876, p. 905.

Inshore limit of jurisdiction—regulated by Stats. 1878, p. 263.

Office, and purchase—of books and stationery, general basis of provision, Stats. 1863, p. 410.

Rates of dockage, toll, etc.—no reduction of tolls where coal removed from wharf by lessee thereof by cars run upon a railway supported by timbers resting upon the wharf, 54 Cal. 241. Dockage collectable from vessels by Gaslight Company under lease whereby the company was bound to do all the dredging at its dock, 54 Cal. 248. Mode of enforcing charge for wharfage and tolls, Stats. 1878, p. 263. Fine for departure of vessel without paying dockage, Stats. 1878, p. 263. Wharfage on merchandise, Stats. 1880, p. 31 or 10.

Modification of rates—reduction or abolition authorized under previous statute, see State. 1872, p. 797.

Lessees of State, etc.—may collect dockage and wharfage, Stats. 1880, p. 31 or 10; when ferry company not exempt from wharfage, 35 Cal. 606.

Limit of money collected—for dockage, wharfage, etc., § 2526.

Discrimination in fixing rates of dockage—authorized, Stats. 1880, p. 31 or 10.

Limit of compensation—for collecting dockage, etc., § 2534.

No tolls or wharfage—to be collected from travelers in transit, etc., § 2548.

Repairs made—proceedings to have, applicable to East street in San Francisco, see Stats. 1878, p. 263.

Sea wall—§§ 2532, 2536; and Stats. 1878, p. 263.

Dredging—powers r quisite for, conferred on Commissioners under previous statute, see Stats. 1874, p. 912.

Harbor regulations—Commissioners authorized to make under previous statute abolishing office of Harbormaster, see Stats. 1874, p. 910.

Harbor frontages—subject to right of eminent domain, Const. Cal. 1879, art. 15, § 1; tide lands of, not to be sold to private persons, Const. Cal. 1879, art. 15, § 3.

Use of Fishermen—part of San Francisco water front authorized to be set apart for, by previous statute, see Stats. 1872, p. 728.

Wharves—Repair and maintenance of private, authorized under previous statute, see Stats. 1874, p. 663; in letting a contract for construction of, Commissioners must strictly follow statute, 43 Cal. 605.

Lease or permission—requisite for collection of dockage, etc., see 54 Cal. 250.

Obstructions—§ 2523 and note; removal of from roadway or sidewalk of East street in San Francisco, enforced as here provided, see Stats. 1878, p. 263.

2525. The Board of State Harbor Commissioners are authorized to extend any of the streets lying along the water front of said city and county, to a width not exceeding one hundred and fifty feet, where they have not been already so extended. The outer half of such streets must be constructed or built and maintained in good repair by the State Harbor Commissioners, or parties holding under them, and may be used as a landing place or pier, on which dockage, wharfage, and tolls may be collected. And until such extensions are made, the Commissioners may have and use as a landing place, with full power to collect dockage, wharfage, and tolls thereon, so much of the streets now fronting upon the water front as may be used for such purpose without obstructing the same as a thoroughfare. The inner half of such streets shall be constructed and maintained in good repair by the owners of the lots abutting thereon, and the City and County of San Francisco. The Commissioners are authorized to construct, across the outer half of said streets, an extension of the sewers of the said city and county. If it be necessary to take any

land for the purpose of widening any such street, the Commissioners are hereby authorized to institute and prosecute to final determination, proceedings therefor, in conformity with the provisions of Part Third, Title Seven, of the Code of Civil Procedure, and to pay such compensation as may be assessed for such land taken. When it becomes necessary for the Commissioners to construct any wharves on the line of the water front, they are authorized to adopt and pay for any structures which would form part of such wharves, and which have been constructed along such line by private parties, prior to the passage of this Act. [In effect April 3, 1876.]

Condemnation of land—for street widening purposes, see Eminent Domain, § 44 and notes.

East street—in San Francisco made a thoroughfare, see Stats. 1878, p. 263.

North Beach water front—for landing merchandise, Stats. 1880, p. 31 or 10.

2526. No greater amount of money shall, in the main, ever be collected by the collection of dockage, wharfage, tolls, rents, and cranage, than shall be necessary to construct and keep in repair such number of wharves, piers, landings, and thoroughfares, construct sheds, dredge such number of slips and docks, construct a sea-wall and harbor embankment, and pay incidental expenses allowed to be paid by this article. [In effect February 28, 1876.]

2527. No contract or obligation entered into by the Harbor Commissioners, which creates a liability or authorizes the payment of money, shall be valid, or of binding force, unless signed by all three of the Commissioners and countersigned by the Secretary of the Board; nor shall any contract involving the payment of money be made by the said Commissioners, unless the amount then to the credit of the Harbor Improvement Fund, together with the revenue estimated to accrue up to the time of the maturity of such contract, over and above the current expenses of the Commission, be sufficient to meet the payments to become due thereon; *provided*, such estimate of revenue shall be limited as to time to one year, and as to amount, to the amount of revenue of the preceding year. [In effect March 19, 1878.]

San Francisco Harbor Improvement Fund—§ 2533.

Contract or obligation—what does not amount to, 54 Cal. 293.

Signed by all three Commissioners—provision does not apply to special relief Act, but majority may act (see § 15), 54 Cal. 293; reservation against such view, 53 Cal. 201.

Certain claims—authorized to be adjusted and paid, Stats. 1874, p. 664.

2528. All moneys collected by virtue of this article shall be paid by the Commissioners into the State Treasury, to the credit of the San Francisco Harbor Improvement Fund, at least as often as once in each month, in like currency as received, excepting so much thereof as may be necessary to pay the salaries of the Commissioners, Secretary, Assistant Secretary, Engineers, Attorney-at-law, Wharfingers, Toll Collectors, office rent, cost of office furniture, books, stationery, lights, fuel, legal and other incidental expenses, and three thousand dollars per month for urgent repairs; which last-mentioned sum the commissioners are hereby authorized to expend monthly in making repairs of wharves, piers, landings, thoroughfares, and other structures required by urgent necessity, without advertising for sealed proposals therefor. And said Commissioners are authorized to remit such moneys to the State Treasurer by express. [In effect February 28, 1876.]

San Francisco Harbor Improvement Fund—§ 2533.

Moneys in hands of State Treasurer—disposition and account of, § 2535.

2529. The Commissioners shall take vouchers for all sums of money by them expended under the authority of this article, excepting fifty dollars per month for postage stamps, express, and other incidental expenses, and safely keep the same on file in the office of the Board. For all sums of money paid by the Commissioners, excepting those mentioned in section twenty-five hundred and twenty-eight, drafts shall be drawn by them on the Controller of State, countersigned by the Secretary of the Board, and the Controller of State shall draw his warrant on the State Treasurer, who shall pay the same out of any money in said Treasury credited to the San Francisco Harbor Improvement Fund. No warrant shall be drawn by the Controller upon the Treasurer of the State, as provided in this section, unless the order bears the signatures of all three Commissioners, and of the Secretary of the Board. [In effect February 28, 1876.]

Harbor Improvement Fund of San Francisco—§ 2533. Referred to in special relief Act, 53 Cal. 201.

Signatures—of all three Commissioners, and of Secretary, requisite, § 2527 and note. Provision held applicable to special relief Act, 53 Cal. 201; but see to effect that signature of two Commissioners sufficient, 54 Cal. 289.

Treasurer of State—duties as to moneys, § 2535.

2530. On the payment into the State Treasury of any sum of money, as provided in this article, the State Treasurer and State Harbor Commissioners shall report to the State Controller the amount so paid; and the State Treasurer shall give to the Commissioners a receipt for all sums so paid.

The Commissioners shall report to said State Controller the amount of money paid into said Treasury by them during each month, and shall also report to said Controller the amount received and disbursed by the Board every three months, and during the period for which such report is made. [In effect February 28, 1876.]

Report of Commissioners—to Governor, § 2537.

State Treasurer's duties—as to disposition and account of money under his control, § 2535.

2531. The Governor of the State and the Mayor of the City and County of San Francisco are hereby made ex officio additional members of the Board of State Harbor Commissioners, for the special purposes herein mentioned, and shall take part in the action of the Board as hereinafter provided. [In effect February 28, 1876.]

Ex officio members—to participate in proceedings on report as to new sea wall, § 2532.

2532. The Board of State Harbor Commissioners are hereby authorized and empowered and directed, within six months from and after the passage of this Act, to employ two consulting civil engineers, to act in concert with the engineers of the Board, to make a survey, select and locate a new line for a harbor embankment or sea-wall, and make a report of their doings to said Commissioners, who shall, after receiving the same, appoint a time for holding, at the office of the Board, a special meeting of the Board to consider the question of the adoption or rejection of the same. The Board shall, at least ten days previous to said meeting, notify the Governor of the State and the Mayor of the City and County of San Francisco of the time, place, and object of said meeting of said Board, and shall request them to be present and take part in the consideration of the question; and at said meeting, or any adjourned meeting thereof, the Governor and Mayor shall be deemed additional members of said Board, with like powers and rights as the other members thereof. If they are not present at the meeting, the Board shall adjourn to a day certain, and notify them anew, as before; and if either be present at the adjourned meeting, with three Commissioners, action may be had, and an affirmative vote of all four present shall determine the question; any less vote shall be a negative vote. But the Board may order new surveys and locations, which may be adopted or rejected in like manner as before. If the vote is in the affirmative, the line adopted shall be thenceforth the line of the harbor embankment and sea-wall of the Port of San Francisco. [In effect February 28, 1876.]

Engineers of the Board—see § 2522.

Line of the harbor embankment and sea wall—of the port of San Francisco fixed by Stats. 1878, p. 263.

Sea wall declared a public use—Stats. 1878, p. 263.

2533. On and after the passage of this Act, the Treasurer of the State shall keep the money remitted to him by the Board of State Harbor Commissioners, to the credit of a fund to be known as the San Francisco Harbor Improvement Fund; all moneys in the State Treasury to the credit of the State Wharf and Dock Fund shall be transferred by the State Treasurer to the San Francisco Harbor Improvement Fund, and the State Wharf and Dock Fund account shall be closed, and the State Treasurer shall notify the Board of such transfer, after which all drafts drawn by the Board shall be paid by the Treasurer out of the San Francisco Harbor Improvement Fund. [In effect February 28, 1876.]

San Francisco Harbor Improvement Fund—Special references to, §§ 2527, 2528, 2529 and note, 2535.

Transfer of San Francisco Harbor Protection Fund—to Harbor Improvement Fund, directed by Stats. 1876, p. 761.

2534. No greater sum than two hundred dollars per month shall be paid, on an average, for the collecting of dockage, wharfage, and tolls, on any wharf and the bulkhead adjacent thereto, and for the cleaning of the same, excepting at the bulkheads between Market and Mission, and Howard street Wharves, at which bulkheads one hundred dollars per month may be paid until wharves have been constructed between said wharves. [In effect February 28, 1876.]

2535. The State Treasurer shall receive all moneys paid by the State Harbor Commissioners, and keep the same in a separate fund, to be known as the San Francisco Harbor Improvement Fund, and pay the same out as provided for in this article, and shall keep an accurate account of all moneys received by him and paid out under the authority of this article, in books kept solely for that purpose; which said books shall be open at all times to the inspection of the Governor and Controller of State, and of any committee appointed by the Legislature, or by either branch thereof. [In effect February 28, 1876.]

2536. When the Commissioners determine to construct any part of the sea-wall, they must advertise for sealed proposals for not less than thirty days, in not less than two daily papers in San Francisco. The advertisement must give a full and accurate description of the work to be done, the place where to be done, and the material to be used. On the day stated in the advertisement, the bids must be opened in the

presence of such bidders as are present, and the contract awarded to the lowest bidder, who shall give a bond, with two or more responsible sureties, to be approved by the Commissioners, for the due performance of the work. Their approval must be indorsed on said bond. If, in the opinion of the Commissioners, the bids are too high, they shall reject them and advertise anew, in like manner as before. And if, in the opinion of the Commissioners, the second bids are also too high, they shall reject them likewise, and may enter into a contract with responsible parties without giving further notice. The parties entering into a private contract with the Commissioners must give a bond, with two or more responsible persons as sureties, to be approved by the Commissioners, which approval shall be by writing indorsed upon said bond, conditioned for the faithful performance of the contract. But the consideration agreed to be paid in any contract entered into without giving public notice, must be five per cent. lower than the lowest responsible bid rejected. The work to be performed under any one contract shall not exceed one thousand lineal feet of harbor embankment or sea-wall. But the Commissioners may enter into as many contracts at the same time as they deem expedient, provided the amount in the Harbor Improvement Fund, together with the revenue estimated to accrue pursuant to section two thousand five hundred and twenty-seven of the Political Code shall be sufficient to meet the contract price of such work, after deducting the current expenses of the Commission and the amount required for the erection and repair of the wharves, dredging the docks and slips, and for incidental expenses; but in no event shall the State be liable on such contracts for any deficiency in the Harbor Improvement Fund. Separate contracts may be entered into for the dredging of a channel for the reception of the rock required for the construction of a harbor embankment; *provided*, that the advertising of sealed proposals, the receiving and opening of bids, and the awarding of contracts required in this section, shall be complied with in the letting of such work in separate contracts. The Commissioners may, if in their opinion it will be more economical, dredge, with the dredge belonging to the State, the channel necessary for the reception of the stone used in the construction of the sea-wall. No contractor who enters into a contract to construct any portion of said sea-wall shall be required to commence the work in less than thirty days after the awarding of the contract. The Board shall, at least ten days previous to the holding of any meeting, as provided in this section, notify the Governor of the State, and Mayor of the City and County of San Francisco, of the time and place and object of the meeting, and request them to be present and take part therein; and at said meeting the Governor and Mayor shall be deemed

additional members of said Board, with like powers and rights as the other members thereof; and no contract shall be entered into under the authority of this section without the consent of either the Governor or Mayor. Neither the Commissioners nor their appointees shall be interested in any contract for the erection or repairing of any work upon the premises described in this article. Any Commissioner or appointee who shall be interested is guilty of a felony. Every proposal shall be accompanied by a certified check for an amount equal to five per cent. of the amount of such proposal, to be made payable to the order of the Secretary of the Board, conditioned that if the proposal is accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be deemed liquidated damages for such failure and neglect, and shall be paid into the San Francisco Harbor Improvement Fund; and all contracts made pursuant to this title shall provide, under penalties of forfeiture of contract, at the option of the Commissioners, that no Chinese or Mongolian labor shall be employed on the work. [In effect March 19, 1878.]

Action on report—of survey and location of sea wall, § 2532.

San Francisco Harbor Improvement Fund—§ 2533.

No Chinese or Mongolian labor—to be employed on public work, Const. Cal. 1879, art. 19, § 3.

East street—in San Francisco to be constructed by contract, as provided in this section, see Stats. 1878, p. 263.

2537. The Commissioners shall, on or before the first day of November, A.D. eighteen hundred and seventy-seven, and every two years thereafter, make to the Governor a full report of all moneys by them received and disbursed, stating, specifically, for what the same was received and for what purpose expended; and shall give a concise account of all improvements made, and the general condition of the property under their charge. [In effect February 28, 1876.]

Report of Commissioners—to Governor, limit of time for, § 332; number to be printed, § 334.

2538. In case the lines of the water front of the City and County of San Francisco, or the lines of any of the streets of said city and county, ending at said water line, shall be changed by authority of this article, the Commissioners shall cause to be made two accurate maps of survey, showing such change, which maps shall be dated, certified, and signed by the Engineer of the Board and Commissioners, and one filed in the office of the Recorder of said city and county, and the other in the office of the Board. After being so filed, they shall be considered and treated as official maps by all the Courts of record in the State. [In effect February 28, 1876.]

2539. The Chief Wharfinger shall keep an office in some convenient place upon the city front, between Market and Pacific streets, which shall be kept open every day (Sundays and holidays excepted) from seven A.M. till 6 P.M. The Commissioners shall furnish a suitable building for an office, for the exclusive use of said Chief Wharfinger and Assistant Chief Wharfinger, with suitable office furniture. It shall be the duty of the Chief Wharfinger to execute and enforce the rules and regulations which may be established by said Board of State Harbor Commissioners pursuant to the provisions of this article. And it shall be the duty of all pilots, masters of tug-boats, masters, owners, and consignees of vessels, to obey all lawful orders and directions of the Chief Wharfinger in relation to the stationing, anchoring, and removing of vessels under and pursuant to such rules and regulations. The Chief Wharfinger is empowered to determine cases of collision, by consent of all parties interested, and where damages do not exceed three hundred dollars the decision is final. [In effect February 28, 1876.]

Refusal to obey—Chief Wharfinger's instructions is misdemeanor, § 2541.

2540. In addition to the duties required to be performed by the Chief Wharfinger, by any section in this article preceding this section, he shall take in charge all abandoned water craft and all boats picked up adrift, and secure the same; after which he shall advertise, for one week, in one of the daily newspapers printed in the City and County of San Francisco, giving the full particulars pertaining to the same, and request all parties interested to appear and establish their title or claim thereto, within twenty days from the last publication. If claimed within said period, such property shall be delivered to the owner on payment of all costs of removing, securing, and advertising the same. If not claimed within said period, or if the owner fails to pay the charges, such property shall be sold by the Chief Wharfinger, to the highest bidder, at public auction, and the proceeds, less the costs, shall be paid the owner, if claimed by him, or, if not claimed by the owner, shall be paid to the Board of State Harbor Commissioners; but the owner shall be entitled to receive from said Board the amount so paid, if he shall claim the same within one year from the date of said payment. For the purposes of this section, the harbor of San Francisco shall be the tide waters of the City and County of San Francisco, and the jurisdiction of the Chief Wharfinger shall, when performing the duties required by this section, be coextensive with such tide waters. [In effect February 28, 1876.]

Wrecks and wrecked property—§§ 2403-2418.

Lost and unclaimed property—§§ 3135-3157.

2541. If any master, agent, or owner of any water craft, shall refuse or neglect to obey the lawful orders or directions of the Chief Wharfinger in any matter pertaining to the regulations of said harbor, or the removal or stationing of any water craft, such master, agent, or owner, so refusing or neglecting, is guilty of a misdemeanor, and, upon conviction thereof before any Court of competent jurisdiction, shall be punished by a fine not to exceed three hundred dollars, or by imprisonment not to exceed one hundred days in the jail of the City and County of San Francisco. [In effect February 28, 1876.]

2542. All persons are forbidden to deposit, or cause to be deposited, in the waters of the harbor of San Francisco, as described in the preceding sections, any substance that will sink and form an obstruction to navigation, without first obtaining permission, in writing, of the Board of State Harbor Commissioners, which permission shall describe, with an ordinary degree of certainty, the place where such deposit may be made, and the Secretary of the Board shall record such permission. Any person violating the prohibition contained in this section is guilty of a misdemeanor, and, upon conviction thereof before a Court of competent jurisdiction, shall be fined not less than one hundred or more than five hundred dollars, or imprisoned in the jail of the City and County of San Francisco not less than thirty nor more than ninety days; *provided*, that nothing herein shall be construed to prevent or interfere with the construction of works now in progress in connection with the Oakland Harbor. [In effect February 28, 1876.]

2543. It shall not be lawful for any person to drive a horse, or mule, or any vehicle drawn by one or more horses or mules, used in the removal of merchandise upon any wharf, pier, quay, landing, or thoroughfare, faster than a walk. Any person violating the prohibition in this section contained is guilty of a misdemeanor, and, upon conviction thereof in any Court of competent jurisdiction, shall be fined not less than twenty dollars, or imprisoned in the County Jail of the City and County of San Francisco not less than ten days. [In effect February 28, 1876.]

2544. The Police Judge's Court of the City and County of San Francisco shall have jurisdiction to try all cases of misdemeanor arising under this article. [In effect February 28, 1876.]

2545. No person shall be appointed to any office by authority of this article who is not a qualified elector of the

State; and no person shall be eligible to any office by virtue of this article who is interested in any class of water craft sailing into and out of the Bay of San Francisco, as owner, mortgagee, or consignee. [In effect February 28, 1876.]

Qualified elector—§ 1083.

2546. All official bonds required to be given by authority of this article shall be to the people of the State of California. [In effect February 28, 1876.]

2547. The Board of State Harbor Commissioners shall procure and adopt a seal. [In effect February 28, 1876.]

2548. No tolls or wharfage shall be collected from travelers going on board or leaving any steamer or ferry, or upon their carriages or baggage, nor from any person or vehicle employed to transport or convey said baggage to or from any steamer or ferry; nor for empty packages returned to the wharf or any vessel; nor for domestic supplies for private individuals, intended for consumption and not for sale, weighing less than one hundred pounds. [In effect March 29, 1878.]

2549. The revenue collected and disbursed by authority of this article shall be gold and silver coin of the United States. [In effect February 28, 1876.]

Validity of provision—34 Cal. 676.

2550. It is hereby made the duty of the Board of Police Commissioners of the City and County of San Francisco to appoint such number of Wharfingers and Toll Collectors special policemen as such Commissioners shall request, in writing, such Police Commissioners to appoint, and also shall furnish such special policemen the usual badge of office, which shall be paid for by the Commissioners; such appointments must be renewed once in each year. The jurisdiction of such special policemen shall be coextensive with the premises described in this article, and their terms of office as such Wharfingers and Toll Collectors. [In effect February 28, 1876.]

2551. Nothing in this article shall be taken or deemed to affect any action or suit now pending, or any right of action accrued, or any contract or obligation existing under the provisions of the statutes hereby amended; but such suits or actions may be prosecuted in the name in which they have been instituted, and such rights of action, contract, or obligation shall remain unimpaired, and may be prosecuted and

enforced in all respects the same as if this amendment had not been made. [In effect February 28, 1876.]

Pending actions—and proceedings not affected, compare §§ 8, 18.

2552. The salary of each Commissioner, except the Governor and Mayor, is two hundred and fifty dollars per month; the salary of the Attorney-at-law and the Secretary is two hundred dollars per month each; the salary of the Chief Wharfinger is two hundred and fifty dollars per month; the salary of the Chief Engineer is two hundred and fifty dollars per month; the salary of the Assistant Secretary and the Assistant Chief Wharfinger is one hundred and fifty dollars per month each; the salary of the Wharfingers is one hundred and twenty-five dollars per month each; and the salary of the Toll Collectors is one hundred dollars per month each. All of which salaries shall be payable monthly; *provided*, that no ex officio officer or consulting engineers shall receive any compensation except traveling and other incidental expenses. [In effect March 18, 1878.]

2553. The Attorney General of the State must give such legal advice and render such legal services as may from time to time be required of him by the Commissioners, in connection with their duties, without further compensation. [In effect February 28, 1876.]

Attorney General—§§ 470-474; to give free opinion to Commissioners of State institutions, § 470, subd. 6.

2554. Section two thousand five hundred and fifty-four of said Code is hereby repealed. [In effect February 26, 1876.]

ARTICLE X.

HARBOR COMMISSIONERS FOR THE PORT OF EUREKA.

§ 2567. Harbor Commissioners for the Port of Eureka.
§ 2568. Power of Board to protect navigation.
§ 2569. Board may make regulations, impose penalties, etc.
§ 2570. Harbormaster of Port of Eureka; duties of.
§ 2571. Compensation and expenses.
§ 2572. Fees of Harbormaster.

2567. There is a Board of three Commissioners, known as the "Board of Harbor Commissioners of the Port of Eureka." The Mayor of the City of Eureka, in the County of Humboldt, is an ex officio member thereof, and one of said Commissioners shall be appointed by the Governor of this State, and shall hold his office for two years, and until his successor is appointed and qualified; and the other of said Commissioners

shall be appointed by the Governor, and shall hold his office for the term of four years, and until his successor is appointed and qualified. And appointments to fill vacancies, which may hereafter occur in the Board of Harbor Commissioners of the Port of Eureka, shall be for the term of four years, and no person shall be eligible to the office of Harbor Commissioner of said Port of Eureka unless he be a resident of the City of Eureka. [In effect February 12, 1878.]

Before amendments 1878—article based on Stats. 1870, p. 744 *et seq.*

2568. The Board of Harbor Commissioners of the Port of Eureka are authorized and empowered to make such rules and regulations, and take such action as may be necessary or proper for the protection of navigation in Humboldt Bay, or in any slough or creek emptying into the same so far as the tide ebbs and flows. [In effect February 12, 1878.]

2569. The Board may:

1. Regulate the erection and extension of wharves and piers, and prescribe the plans and dimensions thereof;
2. Regulate the tolls, wharfage, or dockage to be charged thereon;
3. Regulate the manner of constructing booms, and to limit their extant into the waters of the bay;
4. Prescribe and regulate the manner in which rafts, boats, or vessels must lie at anchor or be moored to any wharf or pier;
5. Prevent and remove obstructions to the regular ebb and flow of the tides, and deposit and escape into the waters of the bay of substances likely to injure, interfere with, or impede the navigation, or to create shoals or shallows in or lessen the depth of the waters thereof;
6. Impose penalties for violation of such rules and regulations, not exceeding, for any one violation, the sum of five hundred dollars, to be recovered by action in the name of the Board before any Court of competent jurisdiction, together with costs of suit, the net proceeds of which actions must be paid to the Treasurer of the Town of Eureka for town purposes.

2570. The Town Marshal of Eureka is the Harbormaster of the Port of Eureka. He must enforce and carry into effect such rules and regulations as the Board of Harbor Commissioners may from time to time adopt and publish, and must report to the Board any and all violations thereof.

2571. The members of the Board must receive the sum of four dollars for every day actually and necessarily employed by them in performing the duties herein prescribed,

to be paid from the Treasury of the town of Eureka. All expenses necessarily incurred by the Board in the performance of their duties must be paid in the same manner and from the same fund as the members of the Board are herein provided to be paid.

2572. The fees of the Harbormaster are prescribed by the Board of Commissioners, and paid monthly by the Board of Trustees of the Town of Eureka, upon the certificate of the Board of Commissioners, except such fees as may be provided to be otherwise paid by the Board.

ARTICLE XI

OF SAILORS AND SAILOR BOARDING HOUSES.

Article Eleven, of Chapter One, Title Six, of the Political Code, is hereby repealed. [In effect December 22, 1875. This Article embraced §§ 2583–2607.]

CHAPTER II.

Highways.

ARTICLE I. ENUMERATION OF HIGHWAYS.
II. RULES AND RESTRICTIONS RESPECTING THEIR USE.
III. POWERS AND DUTIES OF HIGHWAY OFFICERS.
IV. HIGHWAY TAXES.
V. PERFORMANCE OF HIGHWAY LABOR AND COMMUTATION.
VI. LAYING OUT, ALTERING, AND DISCONTINUING ROADS.
VII. ERECTION AND MAINTENANCE OF BRIDGES.
VIII. OBSTRUCTION AND INJURY TO HIGHWAYS.

ARTICLE I.

ENUMERATION OF HIGHWAYS.

§ 2618. What are highways.
§ 2619. Origin of highways.
§ 2620. Abandonment of highways.
§ 2621. Duties of Clerk relative to road matters.

2618. Highways are roads, streets, or alleys, and bridges, laid out or erected by the public, or if laid out or erected by others, dedicated or abandoned to the public.

Basis of section—Stats. 1855, p. 192.

Roads made highways—when, § 2619.

Bed of a river—is a public highway, 47 Cal. 536.

Dedication to the public—what constitutes, 4 Cal. 114; 14 Cal. 642; 53 Cal. 437.

Abandonment—of toll road, § 2799.

2619. Roads laid out and recorded as highways, by order of the Board of Supervisors, and all roads used as such for a period of five years, are highways. Whenever any corporation owning a toll bridge, or a turnpike, plank, or common wagon road, is dissolved, or discontinues the road or bridge, or has expired by limitation, the bridge or road becomes a highway.

2619. Roads laid out and recorded as highways by order of the Board of Supervisors, are highways. Whenever any corporation owning a toll bridge, or a turnpike, plank, or common wagon road, is dissolved, or has expired by limitation or non-user, the bridge or road becomes a highway.

[Act approved March 30th, 1874, amended thirty-seven sections of this chapter; Section 38 of the Act being as follows: "SEC. 38. This Act shall apply only to the following named counties: Calaveras, Santa Barbara, San Luis Obispo, Ventura, Fresno, Kern, Tehama, Contra Costa, Marin, Lake, Sierra, Plumas, Sacramento, Sutter, Mendocino, Mariposa, Alameda, and Lassen; *provided*, that this Act shall not be in force and effect in Solano, Los Angeles, San Joaquin, and Yuba Counties, until the first Monday of March, eighteen hundred and seventy-six." All of the Code sections except 2619, 2620 and 2631, were again amended in 1880.]

2620. A road not worked or used for the period of five years, ceases to be a highway for any purpose whatever.

2620. Roads laid out as provided in section twenty-six hundred and nineteen of this Act, shall not be vacated or cease to be a highway until so ordered by the Board of Supervisors. [Amendment approved March 30, 1874. Applies to Alameda, etc.; see § 2619.]

Private road—is for public use, 32 Cal. 241.

2621. The Clerk of the Board of Supervisors must keep a book in which must be recorded separately all proceedings of the Board relative to each road district, including orders laying out, altering, and opening roads; and in a separate book a description of each road district, its Overseers, its roads, highways, contracts, and all other matters pertaining thereto.

ARTICLE II.

RULES AND RESTRICTIONS RESPECTING THE USE OF HIGHWAYS.

§ 2631. The public easement.
§ 2632. Adjoining owner may construct sidewalk.
§ 2633. May plant trees.
§ 2634. Corporations may lay down conductors and track.
§ 2635. Other corporations may acquire right of way.

2631. By taking or accepting land for a highway, the public acquire only the right of way and the incidents necessary to enjoying and maintaining it, subject to the regulations in this and the Civil Code provided. All trees within the high-

way, except only such as are requisite to make or repair the road or bridges on the same land, are for the use of the owner or occupant of the land.

2631. By taking or accepting land for a highway, the public acquire only the right of way and the incidents necessary to enjoying and maintaining it, subject to the regulations in this and the Civil Code provided. [Amendment of March 30, 1874. Applies to Alameda, etc.; see § 2619.]

2632. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the Board of Supervisors and the Overseers of Highways; and any person using such sidewalk with horse or team, without permission of the owner, is liable to such owner or occupant in the sum of five dollars for each trespass and for all damages suffered thereby.

2633. Any owner or occupant of land adjoining a highway not less than three rods wide, may plant trees on the side contiguous to his land. They must be set in regular rows, at a distance of at least six feet from each other, and not more than six feet from the boundary of the highway. If the highway is more than six rods wide, the row must not be less than six nor more than twelve feet from the boundary of the highway. Whoever injures any of them is liable to the owner or to the occupant for the damage which is thereby sustained.

2634. Every gas, water, or railroad corporation has power to lay conductors and tracks through the public ways and squares in any city, village, or town, when it is established, with the consent of the municipal authorities thereof, and under such reasonable regulations as the authorities and the law prescribe.

Street railroad must run cars on its tracks so as not to endanger person or property, 44 Cal. 414; and cannot object to another track in same street, 45 Cal. 365.

2635. The cases and manner in which railroad, plank road, turnpike, and common wagon road corporations may acquire a right of way upon the public highways are provided for in the subsequent chapters of this Code, in Title VII, Part III, of the Code of Civil Procedure, and under Title "Corporations" of the Civil Code.

Eminent domain—§ 44 and notes.

ARTICLE III.

POWERS AND DUTIES OF BOARDS OF SUPERVISORS AND HIGHWAY OFFICERS OVER HIGHWAYS.

§ 2645. Counties classified for highway purposes.
§ 2646. Road overseers.
§ 2647. Supervisors to have general supervision.
§ 2648. Road Districts, how defined. (Repealed.)
§ 2649. Overseers notified to give bond, take oath, etc.
§ 2650. Duties of Road Overseer.
§ 2651. Commissioner of Highways, duties. (Repealed.)
§ 2652. Compensation of Commissioner of Highways. (Repealed.)
§ 2653. General road fund.
§ 2654. Bonds of road districts. (Repealed.)

2645. For highway purposes, the counties of this State are divided into two classes:

First—The Counties of Alameda, Colusa, Fresno, Lake, Los Angeles, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Yolo, Yuba, constitute the first class.

Second—The Counties of Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Inyo, Kern, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Plumas, San Bernardino, San Diego, San Luis Obispo, Shasta, Santa Barbara, Santa Cruz, Sierra, Siskiyou, Sonoma, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, constitute the second class.

Third—In all counties of the second class, each township shall constitute, and is hereby made and declared, one road district; *provided*, that the Board of Supervisors may, on petition of fifty taxpayers of any township, divide such township into two or more districts, as they may deem necessary for road purposes. [In effect April 16, 1880.]

2646. There must be elected in all the counties of the second class, at the general election in the year eighteen hundred and eighty, and every two years thereafter, one elector of each and every road district in the county to act as Road Overseers in their respective districts, to hold office for two years, commencing on the first Monday of January next succeeding their election, or until their successors are elected and qualified. They must give an official bond in such sum as the Board of Supervisors may determine, and take the usual oath of office. All Road Overseers now in office must hold office and exercise the duties thereof until their successors are elected and qualified under the provisions of this Act. [In effect April 16, 1880.]

2647. The Boards of Supervisors of the several counties of this State shall have general supervision over the roads within their respective counties. They must, by proper ordinance:

1. Cause to be surveyed, viewed, laid out, recorded, opened, and worked, such highways as are necessary for public convenience, as in this chapter provided.
2. Cause to be recorded as highways such roads as have become such by usage or abandonment to the public.
3. Abolish or abandon such as are necessary.
4. Contract, agree for, purchase, or otherwise acquire the right of way over private property for the use of public highways, and for that purpose institute, or require the District Attorney to institute, proceedings under Title VII, Part III, of the Code of Civil Procedure, and to pay therefor from the District Road Fund of the particular district.
5. Let out by contract the improvement of the highways and the construction and repair of bridges, or other adjuncts of highways, when the amount of work to be done by contract exceeds two hundred dollars.
6. Levy a property road tax.
7. Order and direct Overseers specially in regard to work to be done on particular roads in their districts.
8. Cause to be erected and maintained on the highways they may designate, mile-stones, or posts, and guide-posts, properly inscribed.
9. Cause the road tax collected each year to be apportioned to the several road districts entitled thereto, and kept by the Treasurer in separate funds.
10. Audit and draw warrants on the funds of the respective road districts when required to pay for right of way, or work, or improvements thereon. [In effect April 16, 1880.]

SUBDIVISION 1. **Laying out roads**—and altering and discontinuing them, §§ 2688-2714.

SUBDIVISION 3. **Discontinuing roads**—see note to subd. 1.

SUBDIVISION 4. **Acquiring right of way**—Eminent Domain, Code Civ. Proc., § 1237-1263. Assessing damages, power of Supervisors in, 46 Cal. 23.

SUBDIVISION 5. **Road tax**—highway taxes, §§ 2657-2664.

SUBDIVISION 7. **Direct overseers**—§ 2650.

2648. Repealed. [In effect April 16, 1880.]

2649. When overseers of road districts receive notice of their election or appointment from the Board of Supervisors, they must, within ten days thereafter, give the official bond required by said Board, and take the usual oath of office. The notice and certificate that the bond has been approved and filed, and the oath taken and indorsed thereon, or a certified

copy thereof, constitute a commission, and authorizes the person named therein and holding the same to discharge the duties of Overseer until superseded. [In effect April 16, 1880.]

2650. Road Overseers, under the direction and supervision and pursuant to orders of the Board of Supervisors, must:

1. Take charge of the highways within their respective districts.
2. Keep them clear from obstructions, and in good repair.
3. Cause banks to be graded, bridges and causeways to be made, where necessary, keep the same in good repair, and renew them when destroyed.
4. Give two days notice to the inhabitants of his road district liable to do work on roads, when, where, and with what implements, and under whose direction to work, and superintend the same.
5. Collect from each inhabitant notified to work and who fails to work, or prefers to pay it, the commutation fee.
6. Make quarterly reports of all labor performed in his district, and how all road taxes and commutation moneys were expended, to the Board of Supervisors, under oath.
7. Receive and present petitions for new roads, recommend or disapprove the same, and assist in laying them out.
8. Collect all road taxes in the mode provided for the collection of other road poll taxes, and faithfully account for and pay over all moneys unexpended by him to the County Treasurer, to be placed to the credit of the proper road district.
9. Receive for his services, from money in the Treasury belonging to his road district, the sum of three dollars per day for each day's service performed by him, to be audited and ordered paid by the Board of Supervisors. [In effect April 16, 1880.]

Road overseer—under former statutes; personal responsibility for neglect to keep bridge in repair, 21 Cal. 426; not servant nor employé of county, 25 Cal. 313; when not entitled to treat cattle as estray or running at large, 52 Cal. 653.

2651. Repealed. [In effect April 16, 1880.]

2652. Repealed. [In effect April 16, 1680.]

2653. The Board of Supervisors may annually set apart from the property road tax collected from all sources, a sum not exceeding twenty per cent. of the aggregate for general county road purposes, from which sum so set apart they may direct such amounts to be paid as may be found necessary for

such general county road purposes in which the inhabitants of all the districts within the county are more or less interested, or to assist weak or impoverished districts in keeping their roads in repair, to be applied as the said Board may order or direct; *provided*, that the Boards of Supervisors in the several counties, or any Road Overseer, shall have no power to create a debt on any road district in excess of ten per cent. of the estimated amount of receipts from said district for the next ensuing year. [In effect April 16, 1880.]

General road fund of county—Act providing for transfer of half of, and issuance of county bonds, for road improvement fund, construed as mandatory, 50 Cal. 561.

2654. Repealed. [In effect April 16, 1880.]

ARTICLE IV.

HIGHWAY TAXES.

§ 2657. Annual road tax.
§ 2658. Overseers to make a list of inhabitants. (Repealed.)
§ 2659. Levy of property highway tax.
§ 2660. Road tax receipts.
§ 2661. Collection and application.
§ 2662. Additions to lists.
§ 2663. Annual property road tax, how levied, collected, etc.
§ 2664. Cities and towns not to pay tax.

2657. Every male inhabitant of a road district, over twenty-one and under fifty-five years of age, must perform two days labor annually, to be known as the annual road tax, upon the roads and highways of the district, under the demand and direction of the Road Overseer thereof, or pay to such Overseer a commutation fee of three dollars, or such smaller amount as may be fixed by the Board of Supervisors; *provided, however*, that the Board of Supervisors may, and they have the power to order that every inhabitant of the county liable for the foregoing road tax shall, in lieu thereof, for any one year, pay to the Road Overseers of his district a road tax of two dollars, which road tax shall be subject to enforced collection in the same manner and by the same process as is provided for the collection of State poll tax. [In effect April 16, 1880.]

Proviso—inserted by amdt. 1880.

Fifty-five years of age—fifty years, before amdt. 1880.

Annual road tax—called road poll tax, before amdt. 1880.

Before amendments 1880—section founded on Stats. 1858, p. 192

Performance of highway labor, and commutation—§§ 2680-2688.

2658. Repealed. [In effect April 16, 1880.]

2659. The Board of Supervisors must, each year, prior to the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year, over and above the road tax, and must regulate and fix the amount of property highway tax, and levy the same thereby. [In effect April 16, 1880.]

2660. The Board of Supervisors must provide proper blank road tax receipts, to be signed by the Clerk of the Board, and must deliver to each Road Overseer a number equal to the number of inhabitants of their respective districts liable for road tax, take receipts therefor, and charge the Road Overseer receiving the same therewith; but credit must be given to each Road Overseer for all unsold blank road tax receipts returned to the Clerk of the Board of Supervisors. [In effect April 16, 1880.]

2661. Road Overseers must make out lists of the inhabitants of the road districts liable for road tax, and require of each the performance of the labor or the payment of the commutation fee fixed by the Board of Supervisors, and apply such labor and commutation money in the opening, maintaining, and repairing the highways and adjuncts in their respective districts. [In effect April 16, 1880.]

2662. The Road Overseer must, from time to time, add to the lists the names of persons liable for road tax who were omitted, or who have become inhabitants of his district since the original list was made, and enforce the road tax, or collect the commutation fee therefor, and apply the same as hereinbefore provided. [In effect April 16, 1880.]

2663. The annual property tax for road purposes must be levied by the Board of Supervisors at their session when the tax is by them levied for county purposes, and must not exceed forty cents on each one hundred dollars in value of taxable property. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other State and county taxes are levied, assessed, and collected, and turned over to the County Treasurer for the use of the road districts from which it is respectively collected. [In effect April 16, 1880.]

Forty cents—thirty cents before amdt. 1880; basis of section, before such change, Stats. 1856, p. 144.

2664. The road tax and property tax herein provided for must not be levied or collected from the inhabitants or property of incorporated towns and cities which, by municipal authority, levy such taxes for the streets and alleys thereof. Bridges crossing the line between cities or towns and road districts must be constructed by the cities or towns, and the road fund of the road districts into which such bridges reach, proportionally. [In effect April 16, 1880.]

Road tax—read (except in certain counties) "road poll" before amdt. 1880; previous basis of section, Stats. 1856, p. 144.

ARTICLE V.

PERFORMANCE OF HIGHWAY LABOR AND COMMUTATION.

§ 2680. Persons must not work out of district.
§ 2681. Employers responsible for road tax of employés.
§ 2682. Penalty for loss of time or idleness; substitutes.
§ 2683. Delinquents.
§ 2684. Excuse for neglect no exemption.
§ 2685. Overseer's report.
§ 2686. Reports, by whom and what. (Repealed.)
§ 2687. Unexpended moneys.
§ 2688. Penalty for failure to report or pay over.

2680. Road Overseers must not require an individual to work out of the district in which he resides.

2681. Corporations or other employers of residents in any road district are responsible for the road tax assessed against their employees, and a notice to the employer or managing agent, requiring the payment of the road tax of the employee, charges such employer or corporation with such road tax. [In effect April 16, 1880.]

Amendment 1880—Changed highway district to road district, and road poll tax to road tax.

2682. Each person appearing must actually work eight hours each day, to be credited to him by the Overseer; for every hour unnecessarily lost or idled away he must be charged two hours, to be worked out on some other day under notice from the Overseer. Any person may work by an able-bodied substitute.

2683. Every person receiving due notice, who does not appear and labor or commute, is delinquent.

2684. The Overseer's acceptance of an excuse for a neglect, in no case exempts the person excused from performing or commuting for the whole number of days' work for which he was assessed.

2685. Every Overseer must make to the Board of Supervisors quarterly a written account, under oath, containing:

1. The names of all persons assessed to work in his district.
2. The names of all who have actually worked, and the number of days.
3. The names of all who have commuted, and the amount received from them.
4. The names of all delinquents, and the amount collected from them.
5. A full return by items of the amount of labor and money expended at each separate point, and the manner in which and the time when the same was done.
6. The number of road tax receipts sold, and of those returned unsold.
7. An accurate account of every day he, himself, was employed, and the nature and items of the service rendered. [In effect April 16, 1880.]

2686. Repealed. [In effect April 16, 1880.]

2687. Road Overseers must accompany their reports with all unexpended moneys remaining in their hands at the date of the report. [In effect April 16, 1880.]

2688. A failure to make a report as required, or to pay over on the order of the Board of Supervisors any moneys in his hands, subjects the Overseer to a penalty of twenty-five dollars ($25), to be recovered in an action on his bond, together with any balance due from him. Suit therefor may be instituted by the District Attorney, under order of the Board of Supervisors. [In effect April 16, 1880.]

ARTICLE VI.

LAYING OUT, ALTERING, AND DISCONTINUING ROADS.

§ 2698. Petition to change or lay out road.
§ 2699. What the petition must show.
§ 2700. Petitioners to give bonds for costs.
§ 2701. Supervisors to order change, and to appoint Viewers.
§ 2702. Viewers to be appointed, and their duties.
§ 2703. Report of Viewers.
§ 2704. Report not to be approved, when. (Repealed.)
§ 2705. Viewers and Surveyors, how paid, and on what certificate.
§ 2706. Hearing of report and disposition thereof.
§ 2707. Approval, damages, etc.
§ 2708. Proceedings to procure right of way.
§ 2709. Awards, how and by whom paid.
§ 2710. Width of highways.

§ 2711. Private roads, how opened.
§ 2712. Conveyances or decrees of condemnation of lands to be recorded.
§ 2713. Roads crossing railroads, canals, or ditches.
§ 2714. Removal of fences.

2698. Any ten inhabitants of a road district, taxable therein for road purposes, may petition, in writing, the Board of Supervisors to alter or discontinue any road, or to lay out a new road therein. [In effect April 16, 1880.]

Laying out a highway—over lands of estate, consent of administrator to proceedings for, not binding on heirs, 50 Cal. 471.

Contents of petition—see next section.

2699. The petition must set forth and describe particularly the road to be abandoned, discontinued, altered, or constructed, and the general route thereof; over what lands, and who the owners thereof are; whether the owners consent thereto, and if not, the probable cost of the right of way, the necessity for and the advantages of the proposed change.

Petition must state that road will be located in county—in which application made, 40 Cal. 155.

2700. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the Supervisors, in double the amount of the probable cost of the viewing and laying out or altering of any road, conditioned that the bondsmen will pay all the costs of viewing and surveying in case the prayer is not granted and the road finally not opened.

Viewing and surveying—see § 2705, subdivision 6, and note on Divergence from Petition.

2701. Upon filing such petition and bond, the Board of Supervisors must appoint three Viewers, one of whom must be a surveyor, to view and survey any proposed alteration of an old or opening of a new road, to be made in accordance with the description in the petition, and submit to the Board an estimate of the cost of the change, alteration, or opening, including the purchase of the right of way, and their views of the necessity thereof.

In accordance with description in petition—but see § 2703, subd. 6 and note.

2702. The Road Viewers must be disinterested citizens of the county, but not petitioners; they must be sworn to discharge their duties faithfully; must view and lay out the proposed alteration or new road over the most practicable route; notify the owners of land over which it passes of the proposed route; ascertain whether the owners consent thereto, and the amount, if any, they claim or demand for the right of way

over the same; estimate the actual damage to any land over which it passes, and the cost of any bridges or grading necessary; the necessity for and public convenience to be subserved by the road, and whether the opening thereof or change therein proposed should be had.

Basis of section—Stats. 1861, p. 390

Most practicable route—see § 2793, subd. 6.

Notice—particularity and sufficiency of, 43 Cal. 75.

Violation by viewers—of duties under similar statute, ousts jurisdiction of Board of Supervisors, 40 Cal. 158.

2703. When the view and survey of the proposed alteration or new road is completed, the Viewers must report to the Board of Supervisors:

1. The course, termini, length, and cost of construction of the proposed road.

2. The estimate of damage to the owner of any land over which it is proposed to run the road.

3. The names of land owners who consent to give the right of way, and their written consent thereto.

4. The names of land owners who do not consent, and the amount of damage claimed by each.

5. Such other facts bearing upon the subject of importance to be known by the Board of Supervisors.

6. They may also, in their discretion, or by order of the Board of Supervisors, report upon the feasibility and cost of any other route than the one petitioned for, which would subserve the same purposes; and also report as to the necessity of a greater or the practicability of a less width of road than petitioned for. [In effect April 16, 1880.]

Amendment 1880—added subd. 6 to section. Rest of section based on Stats. 1861, p. 390.

Subdivision 6. Divergence from petition—before this provision (as where viewers reported in favor of the location of part only of the road petitioned for), held to oust jurisdiction of Supervisors to open road, 49 Cal. 672; and so where deviation from proposed route, 40 Cal. 158-9.

2704. Repealed. [In effect April 16, 1880.]

2705. The Viewers must be paid three dollars each per day for their services, out of the Road Fund of the district through which the road passes, and the Surveyor his legal fees for services in running out and mapping the road and making the plat and field notes, which must be filed when required before he receives his compensation.

2706. The Board of Supervisors, on the coming in of the report, must fix a day for hearing the same; must notify the owners of land not consenting to give the right of way, of the

hearing, by having written notice served on them personally, or on the occupant or agent of the owner; or if neither, by posting notice at the most conspicuous place on the land, or left at the owner's, agent's, or occupant's residence ten days prior to the day fixed for the hearing; and must, on the day fixed for the hearing, or to which it may be postponed or adjourned, hear the evidence and proof from all parties interested for and against the proposed alteration or new road; ascertain, and by order declare, the amount of damage awarded to each non-consenting land owner, and declare the report of the Viewers to be approved or rejected. [In effect April 16, 1880.]

Before amendment 1880—section contained additional final sentence: "If the report is rejected the road must not be altered or opened," and was based on Stats. 1861, p. 391.

Notice—where irregular (as to owner at beginning of proceedings, but not to his vendee, who purchases pending them), invalidates proceedings, 24 Cal. 427.

2707. If the Board approve the report, and there are no non-consenting land owners, the road must, by order, be declared a public highway, and the Road Overseer ordered to open the same to the public. If there are non-consenting land owners, the Board must appropriate from the Road Fund of the district, and cause the Road Overseer to tender to such non-consenting land owners the award for damages made by the Board. If the awards are all accepted, the road must be declared a public highway, and be opened as before provided. [In effect April 16, 1880.]

Non-consenting land-owners—see § 2708a.

2708. If any award of damages is rejected by the land owners, the Board must, by order, direct proceedings to procure the right of way to be instituted by the District Attorney of the county, under and as provided in Title VII, Part III, of the Code of Civil Procedure, against all non-accepting land owners; and when thereunder the right of way is procured, the road must be declared a public highway, and opened as hereinbefore provided. But if any non-consenting land owner does not recover a greater amount of damages than shall have been allowed him by the Board of Supervisors, then he shall pay all costs and expenses incurred by reason of any suit or other proceedings instituted in the matter. [In effect April 16, 1880.]

Amendment 1880—added last sentence, and struck out name of Commissioner of Highways as optionally to be directed to institute proceedings.

Proceedings to procure the right of way—Eminent Domain, § 44 and notes; statute regulating, governs as to compensation on condemnation of land for a public road, 51 Cal. 577. Where statute for con-

demnation is unconstitutional or not strictly followed, opening of road perpetually enjoined, 24 Cal. 427. Person having equitable title not a party to, 51 Cal. 138; and title cannot be investigated by Commissioners appointed to assess damages and benefits, 49 Cal. 29. Special statute for, must be strictly pursued, 49 Cal. 222.

Non-consenting land-owner—(under Statute 1861) could not enjoin opening of highway when he had failed to agree with Supervisors as to damages or to sue the county therefor, 22 Cal. 251; nor where the damages awarded and tendered on condemnation were refused, 23 Cal. 464; but otherwise where action brought within the time prescribed, 31 Cal. 409: provided it was alleged (under Stat. 1861) that plaintiff had failed in an attempt to come to an agreement with the Supervisors as to damages, 28 Cal. 662. Judgment for damages must be satisfied before road can be opened, 45 Cal. 640.

2709. All awards by agreement, ascertainment by the Board, or by the proper Court, must be paid out of the Road Fund of the district on the order of the Board of Supervisors. If the road lies in more than one district, the Supervisors must proportionately divide the awards and other costs between them.

Fund out of which awards payable—existence of money in, must be shown, 52 Cal. 385.

2710. All highways must be at least forty feet wide, except those now existing of a less width. [In effect April 16, 1880.]

Forty feet wide—fifty feet before amdt. 1880.

2711. Any person or persons desiring to obtain a road for private convenience, and not intending the same for the use of the traveling public generally, shall present a petition to the Board of Supervisors, having a specific description of said proposed road, giving the length, width, and description thereof, the names of all parties owning the land to be affected thereby, and also the conditions to be observed in respect to gates, fences, and other matters agreed upon. If said petition be accompanied by the written consent of all the parties interested in the land so to be crossed by the said road, the Board shall, by its order, declare such road a private or by-road, and said order, with the description, and also the consent of parties to said road, shall be recorded in the road record of the county. In case all parties owning lands on the line of said road do not agree as to the location of said road, and their consent cannot be obtained, the same measures shall be taken, and the same laws shall apply, as provided in this Code for the location and establishment of public highways, except that it shall be necessary only for the person or persons desiring such private or by-road to petition the Board of Supervisors, as in section two thousand six hundred and ninety-nine of this Code provided. If there be no reasonable way in which the petitioner or petitioners can gain access to

the public highway, or to the public schools of his district, other than by passage across the land of said non-consenting owners, and the said petitioner or petitioners execute and file with the County Clerk a sufficient bond, with two sureties, to be approved by the Supervisors of the district in which said road is sought to be established, conditioned for the faithful payment to said non-consenting owner, owners, or occupant under lease of the land over which said road is to pass if the petition be granted, of all damages that may be sustained from the temporary use thereof by said petitioner or petitioners, pending the final determination of the petition and proceedings had thereunder, the Road Overseer of said district shall thereupon order the said road temporarily opened. If the owner or owners, or persons in possession of said land, shall refuse to open temporarily said private road, in accordance with the Overseer's order, he or they shall be responsible in damages to the party or parties injured thereby, the amount to be determined by a proceeding in a Court of competent jurisdiction. In all cases where private roads are established or located, it shall be one of the conditions of the same that the erection of gates, repairs of roads, building of bridges, and all costs of the maintenance of the same, together with the costs of location and damages allowed, if any, shall be paid by and become a charge against the parties seeking or desiring to have the said road so located, and that the road district shall be put to no expense on account thereof. [In effect April 16, 1880.]

Section reconstructed—and enlarged by amdt. 1880.
Private roads—fully discussed, 32 Cal. 241.

2712. In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned, and paid for, either an instrument in writing, conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the decree of the Court condemning the same, must be made and filed and recorded in the office of the Recorder of the county, in which the land so conveyed or condemned must be particularly described.

2713. Whenever highways are laid out to cross railroads, canals, or ditches on public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals, or ditches, that the public highway may cross the same without danger or delay; and when the right of way for a public highway is obtained through the judgment of any Court over any railroad, canal, or ditch, no damages must be awarded for the simple right to cross the same.

2714. When the alteration of an old or the opening of a new road makes it necessary to remove fences on land given, purchased, or condemned by order of a Court for road or highway purposes, notice to remove the fences must be given by the Road Overseer to the owner, his occupant, or agent, or by posting the same on the fence; and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the Road Overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment. [In effect April 16, 1880.]

ARTICLE VII.

ERECTION AND MAINTENANCE OF BRIDGES.

§ 2724. Bridges, how maintained.
§ 2725. Aid of county for bridge purposes.
§ 2726. Contract for construction or repair of bridges.
§ 2727. When one Overseer fails to aid, who may repair bridge.
§ 2728. Overseers failing, how bridge repaired.
§ 2729. Petition for erection of bridge, and notice thereof.
§ 2730. If found necessary, the bridge to be built.
§ 2731. Overseer's report as to bridges.
§ 2732. Semi-annual meetings for care of bridges.

2724. All public bridges, not otherwise specially provided for, are maintained by the road district in which they are situate, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the Road Overseer and the Board of Supervisors, the expense of constructing, maintaining, and repairing the same being primarily payable out of the Road Fund of the district in the hands of the Road Overseer or County Treasurer, and from road taxes. [In effect April 16, 1880.]

Under control of Road Overseer and Board of Supervisors— who were held personally responsible for injuries caused by want of proper repairs to local bridge, 21 Cal. 426.

Injuries to bridges, etc.—punishment for, see Penal Code, § 588.

2725. Whenever it appears to the Board of Supervisors that any road district is or would be unreasonably burdened by the expense of constructing, or of the maintenance and repair of any bridge, they may, in their discretion, cause a portion of the aggregate cost or expense to be paid out of the General Road Fund of the county, or out of the General County Fund, or both; or they may levy a special bridge tax therefor, not exceeding one-fourth of one per cent. on the tax-

able property of the county, annually, till the amount appropriated in aid is raised and paid. [In effect April 16, 1880.]

2726. No bridge, the cost of the construction or repair of which will exceed the sum of two hundred dollars, must be constructed or repaired, except on order of the Board of Supervisors. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the Board of Supervisors, through the Road Overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices: one at the Court-house, one at the point to be bridged, and one at some other neighboring public place in the county. The bids to be sealed, and opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into to the approval of the Board of Supervisors. [In effect April 16, 1880.]

Contract awarded to lowest bidder, after reasonable notice—otherwise (under similar statute), contract not binding, 20 Cal. 502.

2727. If the Road Overseer of one road district, after five days notice from the Overseer of an adjoining district to aid in the repair of a bridge in which each are interested, fails so to aid, the one giving notice may make the necessary repairs, and must be allowed a pro rata compensation therefor by the Board of Supervisors out of the Road Fund of the defaulting district.

Basis of section—Stats. 1856, p. 193.

Responsibility of county—not for personal injuries caused by want of repair of bridge, 21 Cal. 426; 25 Cal. 313.

2728. If the Overseer of any road district chargeable with the repair of a bridge fails to make the needed repairs after being informed that a bridge is impassable or unsafe, and is requested to make the same by two or more freeholders of the district in which it is situate, or the two districts which it unites, the freeholders may represent the facts to the Board of Supervisors, who, upon being satisfied that the bridge is unsafe, must cause the same to be repaired, and must pay therefor from the funds of the district chargeable therewith.

2729. When a bridge, the cost of which will exceed two hundred dollars, is necessary, any five or more freeholders of the road district interested therein may petition the Board of Supervisors for the erection of such needed bridge. The Board must thereupon advertise such application, giving the location and other facts, for two weeks, in a newspaper printed in the county; if none, then by posters: one at the proposed location, one at the Court-house, and one at some other public

place in the county, and notify the Overseer to attend at a certain time and place to hear the application. [In effect April 16, 1880.]

2730. On the day fixed to hear the application, proof of the notice given being made satisfactory, the Board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary as petitioned for; if found to be so, the Board must determine the character of bridge to be constructed, prepare plans and specifications, invite bids, let the contract, and have the same erected, and provide for the payment therefor as herein provided.

2731. Road Overseers must, in their official reports, give a full account of all bridges of which they have in whole or in part the charge and maintenance, those constructed or repaired, and the cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof. [In effect April 16, 1880.]

2732. The county is responsible for providing and keeping passable and in good repair bridges on all public highways, and the Supervisors may appoint, semi-annually, a special meeting, at which the Road Overseers, on days set apart for their respective districts, must be present; and at such special meetings, so appointed, the Supervisors must hear highway and bridge reports and complaints from officers and citizens; after which such orders must be made and such action had regarding the same as the public welfare demands. [In effect April 16, 1880.]

ARTICLE VIII.

OBSTRUCTIONS AND INJURIES TO HIGHWAYS.

§ 2743. Removal of encroachments.
§ 2744. Notice to remove encroachment.
§ 2745. Penalty for neglect.
§ 2746. Action to abate encroachment.
§ 2747. If encroachment not denied, how removed.
§ 2748. No gate allowed, except where.
§ 2749. Penalty for leaving open gate or riding off the road.
§ 2750. Penalty for obstruction or injury.
§ 2751. Penalty for injuring milestone and guide post.
§ 2752. Removal of fallen trees.
§ 2753. Unauthorized felling of trees.
§ 2754. Notice on bridges, and penalty for disregarding.
§ 2755. Destroying shade or ornamental trees.
§ 2756. Application of penalties.
§ 2757. Road laws now in force not affected by Code. (Repealed.)

2743. If any highway, duly laid out or erected, is encroached upon by fences, buildings, or otherwise, the Road Overseer of the district may, orally or in writing, require the encroachment to be removed from the highway. [In effect April 16, 1880.]

Require encroachment to be removed—Notice, see next section.

2744. Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days.

2745. If the encroachment is not removed or commenced to be removed and diligently prosecuted prior to the expiration of the ten days from the service or posting the notice, the one who caused or owns or controls the encroachment forfeits ten dollars for each day the same continues unmoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for vehicles, the Overseer must forthwith remove the same.

2746. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment, refuses either to remove or permit the removal thereof, the Road Overseer must commence in the proper Court an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, and also his costs in such action. [In effect April 16, 1880.]

Encroachment denied—adverse occupation does not confer right to obstruct street dedicated to public use, 53 Cal. 437.

Action to abate nuisance—Code Civ. Proc., § 731; special damage must be shown by private party, 41 Cal. 449; 52 Cal. 355; 53 Cal. 403. Nuisance, Civil Code, §§ 3479-3503; Penal Code, §§ 370-374.

2747. If the encroachment is not denied, but is not removed for five days after the notice is complete, the Road Overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as also for each day the same remained after notice was complete, the sum of ten dollars, in an action for that purpose. [In effect April 16, 1880.]

2748. No gates must be allowed on any public highway duly laid out, except on highways running through lands subject to overflow to such extent as to remove the fences.

When so allowed they must be erected and maintained at the expense of the owner or occupant at whose request or for whose benefit they were erected. If such expense is not paid, the gate must be removed as an obstruction.

2749. Any one who leaves open such gate, or wilfully and unnecessarily rides over ground adjoining the road on which the gate is erected, forfeits to the injured party treble damages.

2750. Whoever obstructs or injures any highway, or obstructs or diverts any water course thereon, is liable to a penalty of five dollars for each day such obstruction or injury remains, and must be punished as provided in Section 588 of the Penal Code.

Basis of section—and of next two, Stats. 1861, p. 397.

2751. Whoever removes or injures any mileboard, or milestone, or guide post, or any inscription on such, erected on any highway, is liable to a penalty of ten dollars for every such offense, and punishable as provided in Section 590 of the Penal Code.

2752. Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway, to remove such tree or obstruction forthwith. If it is not so removed, the owner or occupant is liable to a penalty of one dollar for every day thereafter till it is removed, and the cost of removal.

2753. Whoever cuts down a tree so that it falls into any highway, must forthwith remove the same, and is liable to a penalty of five dollars for every day the same remains in such highway.

2754. Road Overseers may put up on bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay five dollars for each offense. [In effect April 16, 1880.]

2755. Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree, planted or standing on any highway, unless the same is deemed an obstruction by the Road Overseer, and removed under his direction, forfeits twenty-five dollars for each such tree. [In effect April 16, 1880.]

Injuries to highways, etc.—Penal Code, § 588.

2756. All penalties or forfeitures given in this chapter, and not otherwise provided for, must be recovered by the Road Overseer of the respective road districts and be applied on the highways in which they are collected. [In effect April 16, 1880.]

2757. Repealed. [In effect April 16, 1880.]

CHAPTER III

Toll Roads.

ARTICLE I. CONSTRUCTION OF TOLL ROADS.
II. USE OF TOLL ROADS, AND OBSTRUCTIONS THEREON.
III. INSPECTION AND REPAIRS.

ARTICLE I.

CONSTRUCTION OF TOLL ROADS.

§ 2779. Notice of and application to construct the road.
§ 2780. Special meeting of Supervisors.
§ 2781. Hearing the application.
§ 2782. Action of Supervisors.
§ 2783. Commissioners, how appointed for other counties.
§ 2784. Laying out the road.
§ 2785. Compensation of Commissioners, map and report.
§ 2786. Branches and extensions.
§ 2787. Acquiring lands by grant.
§ 2788. Appropriation of damages for highways taken.
§ 2789. Application, when unnecessary.
§ 2790. Orchards and gardens.
§ 2791. Bridging streams.
§ 2792. One road corporation using the road-bed of another.
§ 2793. How to be constructed.
§ 2794. May relay with what.
§ 2795. Milestones and posts.
§ 2796. Guide posts.
§ 2797. Inspection, certificate, and completion.
§ 2798. Erection of gates, etc.
§ 2799. Abandonment of road, and what becomes of it.
§ 2800. County may purchase road, how.
§ 2801. Appraisement and award, how made.

2779. If all lands necessary for the road-bed and other purposes are not otherwise acquired as hereinafter provided, the company proposing to construct a toll road through any part of a county must publish a notice in some newspaper published therein, and if none, then in the newspaper nearest thereto, once in each week for six successive weeks, specifying the character of the road, the termini, and each town, city, or village through which it is proposed to construct it, and the time when the application hereinafter required will be made. After such notice is complete, on the day specified therein,

application must be made to the Board of Supervisors of the county for authority to take the necessary land and to construct the road described in the notice.

Basis of section—Stats. 1853, p. 169; 1870, p. 885.

Wagon road Corporations—taking tolls, Civil Code, § 514 *et seq.*

Franchise to collect tolls—on a road not exclusive, 25 Cal. 284; held not to pass by Sheriff's deed under execution sale, 24 Cal. 474; on a public road, granted to an individual, unauthorized and invalid, 30 Cal. 520.

2780. On application therefor the President of the Board of Supervisors may call a special meeting to hear the application, ten days notice thereof being served on each of the other Supervisors, either personally or by leaving it at his place of residence if absent; the expense of such special meeting and serving notices must be paid by the applicant.

Basis of section—Stats. 1853, p. 114

2781. On the hearing all residents of the county and others interested may appear and be heard. The Board may take testimony, or authorize it to be taken by any officer of the county, and adjourn the hearing from time to time.

2782. If it appears to the Board of Supervisors that the public interests will be promoted thereby, a majority of all the members thereof may grant the application, and by order authorize the company to take the real property necessary, and appoint two Commissioners to lay out the road, who are disinterested either in the company or in any land sought to be taken or adjoining thereto. A copy of this order must be recorded in the County Clerk's office before action under it is had.

Basis of section—Stats. 1853, pp. 114, 171.

Turnpike road company—valid note of, 50 Cal. 340.

2783. If the route extends into more than one county the application must specify their names, and the Board of Supervisors of each of such counties must appoint Commissioners to act in their respective counties with the Commissioner and surveyor of the company. The company must appoint one Commissioner of like qualification as those appointed by the Board of Supervisors, and furnish a surveyor to accompany and act with them.

Basis of section—Stats. 1835, p. 114.

2784. The Commissioners must take the oath of office, and view and lay out the road as in their judgment will best promote the public interest. They must hear all persons interested, and may take testimony; they may determine the

breadth of the way, not exceeding one hundred feet, except where the company acquire a greater breadth by grant. They must make, sign, and certify an accurate survey and description of the route and of the land necessary for the road, buildings, and gates in each county, and record the same in the office of the County Clerk thereof. When the breadth of the road is not fixed by the Commissioners it may be fixed by the Commissioner of Highways or the Board of Supervisors of the county.

Basis of section—Stats. 1853, p. 171; 1870, p. 885.

2785. The company must pay to each Commissioner his expenses and four dollars a day for his services; cause their surveyor to make the map of the proposed road, which, when approved and certified by the Commissioners, must be filed with the report in the office of the Clerk of the Board of Supervisors and recorded.

2786. The Directors of any such company may, with the written consent of the holders of two-thirds of the stock, proceed in the manner prescribed by the preceding seven sections to construct branches to their road, or to extend it or alter any part of its route or branches.

2787. Lands necessary for the purposes of the road or appurtenances may be acquired by purchase or condemnation. Lands within any highway may be granted by the Board of Supervisors or town or city authorities on such terms and for such sums as may be agreed upon.

2788. When the road company desires the exclusive use of lands forming part of a highway, and such use is granted by the Supervisors, the damages received therefor are to be paid to the Road Fund of the road district in which the same is situated.

Basis of section—Stats. 1870, p. 886.

Road company—collecting tolls, Civil Code, § 514 *et seq.*

2789. When the company has obtained all the lands necessary in any county, by purchase or agreement, the road may be constructed without making the application to the Board of Supervisors hereinbefore provided for; but before proceeding to do so an accurate survey of such part of the road must be made by a practical surveyor, signed and sworn to by the President and Secretary, and recorded in the County Clerk's office; and if the road extends into another county, authority to construct the road there must be first obtained.

Basis of section—Stats. 1870, p. 886.

2790. No such road must be laid out through any orchard of four years growth, to the injury of the fruit trees, or any garden of four years cultivation, or any dwelling house or building connected with a dwelling house, or any yard or inclosure necessary thereto, without the consent of the owner.

Basis of section—Stats. 1853, p. 171.

2791. The road company may bridge any stream or river on the route of their road, when not within the limits prescribed by law for the erection and maintenance of any other bridge; and in bridging streams used for rafting lumber the bridge must be so constructed as not to prevent or endanger the passage of any raft forty feet in width.

Basis of section—Stats. 1853, p. 173.

2792. No plankroad company must construct its road on the road of another company, except in case of crossings, without consent of the latter.

2793. Every such road must be laid out a least fifty feet wide. The track of plank roads must be constructed eighteen feet wide, of timber, plank, or other hard material. The track of turnpikes must be bedded with stone, gravel, or such other hard material found on the line thereof, to the width of eighteen feet, and faced with broken stone or gravel. The common wagon road must be graded at last twelve feet in width, and so constructed with necessary turnouts as to permit vehicles to pass each other conveniently. All the roads must be ditched on the sides when practicable, and have proper and necessary sewerage, and be so constructed that vehicles may pass on and off the track at all intersections of roads.

2794. Every company that has once laid their road with plank may relay it or any part of it with broken stone, gravel, shells, or other hard material whereby they keep a good, substantial road.

2795. A milestone or post must be maintained at every mile, with an inscription showing the distance from the commencement of the road. If the road commences at the end of any other road, or intersects therewith, having milestones or posts on which the distance from any city or town is marked, a continuation of that distance must also be inscribed.

Injuries to milestones, etc.—Penal Code, § 590.

2796. A guide post must be erected at every place where the road is intersected by a public road, with an inscription showing the name of the place to which such intersecting

road leads, in the direction to which the name on the guide post points.

Injuries to guide-posts, etc.—Penal Code, § 590.

2797. When the road, or three consecutive miles thereof, is completed, the Commissioner of Highways or such Road Overseer or other person thereto specially appointed by the Board of Supervisors of the county, must inspect the road when requested, and if satisfied that the road conforms to the requirements of the law, must certify to the facts and file the certificate in the office of the County Clerk; for such service four dollars per day must be by the company paid to the Inspector or Commissioner. When only three miles of any plankroad are completed, if it is not the entire road, tolls must not be collected thereon for more than one year, unless the road or five consecutive miles are completed within the year.

Basis of section—Stats. 1870, p. 885.

2798. When the certificate of completion is filed, toll gates may be erected and tolls collected. No toll gate, toll house, or other building must be put up within ten rods of the front of any dwelling house, barn, or outhouse, without written consent of the owner thereof.

Basis of section—Stats. 1870, p. 886.

Toll gates—of turnpike road company, number and location of, must be fixed by Board of Supervisors (under former statute), else tolls cannot be collected, 51 Cal. 381.

Toll gatherer—agent of turnpike road company is, under § 518 of Civil Code, 51 Cal. 489

2799. Whenever the holders of two-thirds of the stock consent, the Directors of any company may abandon the whole or any part of their road at either or both ends, by written surrender thereof, attested by their seal, and acknowledged by the President and Secretary as a deed or grant is acknowledged, and recorded in the Clerk's office of each county where the surrendered road lies; thereafter the surrendered road belongs to the road districts in which it lies; but the company may continue to take toll on any three consecutive miles in length not so surrendered.

Road so abandoned—becomes a highway, § 2619.

2800. At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chapter, the county within which the road, or any portion thereof, is located, may purchase the same at a fair cash valuation, to be fixed by seven Commissioners, all disinterested persons, three to be appointed by the Board of

Supervisors of the county, three by the owner of the road, and the seventh by the Judge of the Superior Court of the county, who must estimate the fair cash value of the road, and make report thereof, under oath, to the Board of Supervisors. If, within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road, or his authorized managing agent, in gold coin, the right of the owner to take tolls on the road is terminated, and the road becomes the property of the county. [In effect April 3, 1880.]

2801. A majority of the Board of Commissioners mentioned in the preceding section constitute a quorum, and the concurrence of a majority in making the estimate and award is binding upon the road owner if approved by the Board of Supervisors. The Commissioners must make their report within thirty days after their appointment, and if approved, the tender of the amount of the appraisement and award must be made by the County Treasurer; whether the owner conveys the road to the county or not, the report and tender operate as a conveyance to the county of the road and all its incidents and appurtenances.

Basis of section—Stats. 1870, p. 883.

ARTICLE II.

USE OF TOLL ROADS, AND OBSTRUCTIONS THEREON.

§ 2814. Persons exempt from tolls.
§ 2815. Encroachments, how removed.
§ 2816. Who liable for penalty, and what.
§ 2817. Action for penalty or trespass.

2814. The following persons, and none other, are exempt from payment of toll on wagon, turnpike, or plank roads:

1. Persons going to or from any funeral, and all funeral processions.

2. Troops in actual service of the State or of the United States, and persons going to or from a military training which by law they are required to attend.

3. Persons going to or from the Court-house in obedience to a subpœna in a criminal action.

4. Persons living within one mile of any gate by the most usually traveled road may pass it at one-half toll, when not engaged in the transportation of other or the property of others.

5. Farmers living on their farms within one mile of any gate by the most usually traveled road, may pass free when going to or from their work on such farms.

6. School children attending school within three miles of their parents' or boarding-house.

7. The Road Overseer of the road district through which road passes, or the Commissioners of Highways for the purpose of inspecting the condition of the road. [Approved March 12, 1880.]

Person not exempt—evading payment of tolls, fine against, Penal Code, § 389.

2815. On application by an officer of the company, the Commissioner of Highways, or Road Overseer of the district where the same exists, may inquire into any encroachment upon the lands of the company used for the purposes of the road, caused by fence, building, or otherwise, and he must, if he finds it does exist, require or cause its removal as provided for highway encroachments in Article VIII, Chapter II, of this Title.

Obstructions and injuries to highways—§§ 2743-2756.

Penalty for failure—to remove encroachment, § 2816.

2816. Every person who, having the control thereof, neglects to remove an encroachment after being notified thereof, or permits the same to remain after notice, unless he immediately commences and diligently prosecutes its removal to completion, is liable to a penalty of five dollars for every day of such neglect or failure.

2817. An action for the penalties given by this chapter, and for any trespass on or injury to such road, may be maintained in the county where the act was done, or in that where the defendant resides, by the company.

Injuries to toll houses or turnpike gates—constitute misdemeanor, Penal Code, § 589.

Trespass on turnpike road—by building railroad thereon and disturbing bed thereof, damages actually sustained alone recoverable, 53 Cal. 11.

ARTICLE III.

INSPECTION AND REPAIRS.

§ 2827. Inspection of roads, and repairs.
§ 2828. Closing gates, and penalty.
§ 2829. Defects in road, to be reported to whom.
§ 2830. Enforcing obedience to notice and requirement.
§ 2831. Fees of Commissioner or Overseer.
§ 2832. Pack trails in mountain districts.

2827. Every Commissioner of Highways, or Road Overseer of the district, to whom complaint in writing is made

that any part of a wagon, turnpike, or plank toll road in his county or district, or any part of such road, the gate nearest to which is in his county or district, is out of repair, must examine it without delay and give notice of the defect, particularly describing the same, to the person attending the gate nearest thereto. If the necessary repair is not made, or defect remedied, within three days after such notice is given, the Commissioner or Road Overseer may order such gate to be thrown open.

2828. A gate so ordered to be thrown open must not be shut nor any toll collected thereat until the Commissioner of Highways or Road Overseer ordering it shut grants a certificate that the road is in sufficient repair, and that the gate ought to be closed. The company and their gatekeeper, or other employee, violating or permitting the violation of this section, or the order made under the preceding section, are each liable in a penalty of twenty-five dollars for each offense, to be recovered by the party aggrieved.

2829. Every Commissioner of Highways or Road Overseer who discovers a defect in any toll road in his county or district, or a gate placed in a situation contrary to law, must give written notice thereof to one or more of the Directors or managing agents of the company, requiring the defective road to be repaired, or the gate to be removed, within a specified time, and may order that in the meantime such gates as he specifies be thrown open.

2830. If the notice and requirements are not obeyed, the Commissioner of Highways or Road Overseer must make immediate complaint to the District Attorney of the county, who must prosecute the company therefor in the name of the people for so suffering the road to be out of repair, or of having placed any gate in a situation contrary to the law; and if convicted thereof, the company must be fined not exceeding two hundred and fifty dollars.

2831. The Commissioner of Highways or Road Overseer complaining to the District Attorney, or who makes inspection and discovers defects in the road, is entitled to three dollars for each day's services in inspecting the road, or necessarily expended in prosecuting the action therefor, to be paid in case of conviction as costs. When no action is had, but repairs are made, or gate removed, on the inspection and requirement of the Commissioner of Highways or Road Overseer, the toll gatherer nearest the road so out of repair, or the gate to be moved, must pay the fees hereinbefore specified

out of the tolls collected; if he refuse to pay the same, the same may be recovered by action, with costs.

2832. The Boards of Supervisors of the several counties of this State are hereby authorized to permit the toll road companies heretofore or which may hereafter be organized under the provisions of this Code, for the purpose of constructing toll roads within the mountain districts of this State, to first construct on the line of their proposed toll road a pack trail for the accommodation of pack trains and horsemen, and to collect tolls thereon. The Board of Supervisors shall fix the amount of license to be paid and tolls to be collected on such pack trail, and that no such permit or franchise shall be granted for a longer period than two years. [In effect March 30, 1874.]

CHAPTER IV.

Public Ferries and Toll Bridges.

ARTICLE I. GENERAL PROVISIONS.
II. TOLL BRIDGES.
III. TOLL FERRIES.

ARTICLE I.

GENERAL PROVISIONS.

§ 2843. What Board to grant authority to construct.
§ 2844. Notice must be proved.
§ 2845. Duty of Board of Supervisors granting authority.
§ 2846. License tax and rate of tolls, how fixed.
§ 2847. Report of bridge or ferry owner or keeper.
§ 2848. Inquiry of the Board of Supervisors fixing tolls.
§ 2849. When to direct license to issue.
§ 2850. Bond, conditions and execution.
§ 2851. When bridge unites two counties.
§ 2852. Supervisors shall not act if interested.
§ 2853. Toll bridge or ferry within one mile of another, when.
§ 2854. Owner of land preferred to build bridge or ferry.
§ 2855. How lands are acquired for use of bridge or ferry.
§ 2856. Must post rates of toll.
§ 2857. Revenue derived from license, how disposed of.
§ 2858. To keep banks in repair.

2843. When authority to construct a toll bridge, or to erect and keep a ferry over waters dividing two counties is desired, application must be made to the Board of Supervisors of that county situated on the left bank descending such bay, river, creek, slough, or arm of the sea.

Basis of section—Stats. 1855, p. 183.

Maintaining toll bridge or ferry without authority—is misdemeanor, Penal Code, § 386; like provisions as to keeping bridge or ferry without license, cited 6 Cal. 597; 7 Cal. 128; but held not to confer a franchise for whose infringement a civil action will lie, 7 Cal. 126.

Contest concerning a ferry license—29 Cal. 456.

2844. The Board of Supervisors must not grant authority to construct or erect a toll bridge or ferry until the notice of such intended application has been given as respectively required in Articles II and III of this chapter.

Section founded—on Stats. 1855, p. 184.

2845. The Board of Supervisors granting authority to construct a toll bridge or to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the bridge or ferry for the benefit of the county, and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof.

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually.

3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent. on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value, together with the repairs and maintenance thereof for any succeeding year.

4. Make all necessary orders relative to the construction, erection, and business of licensed toll bridges or ferries which they have by law the power to make. The Board of Supervisors may, at any time they see fit, authorize and maintain fords across any water within any distance of any licensed toll bridge or ferry.

Basis of section—Stats. 1870, p. 887.

2846. The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the Board of Supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the Board of Supervisors must not exceed ten per cent. of the tolls annually collected.

2847. Every owner or keeper of a toll bridge or ferry must report annually to the Board of Supervisors from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection, and equipment of the toll bridge or ferry.

2. The repairs made during the proceding year, and the actual cost thereof.

3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business.

4. The amount of tolls collected; and,

5. The estimated actual cash value of the bridge or ferry, exclusive of the franchise.

Basis of section—and of next, Stats. 1870, p. 887.

2848. Whenever the Board of Supervisors are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county. When the estimate of the Board is made, if the same is not agreed to by the owner or keeper of the bridge or ferry, the same must be fixed by three Commissioners, one to be appointed by the Board of Supervisors, one by the owner and keeper, and the third by the County Judge, who must hear testimony and fix such value and cost according to the facts, and report the same to the Board of Supervisors under oath. In all estimates of the fair cash value of the bridge or ferry the value of the franchise must not be taken into consideration.

County Judge—superseded by Judge of Superior Court; see Const. Cal. 1879, art. 22, § 3.

2849. When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the Board must, on such ascertained amount, fix the annual license tax rate of tolls, and the amount of the penal bond, and direct a license to be issued by the Clerk.

Basis of section—Stats. 1870, p. 880.

Direct a license to be issued—power not judicial, but belongs to Supervisors, 7 Cal. 117; when renewal may be refused, and new license granted to another, without excess of jurisdiction, 29 Cal. 453; when not, 7 Cal. 287.

2850. The bond required of the owner or keeper of the toll bridge or ferry must be in the sum fixed by the Board of Supervisors, with one or more sureties, and conditioned that the toll bridge or ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the State and all legal orders of the Board of Supervisors regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such bridge or ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the

President and filed with the Clerk of the Board of Supervisors.

Basis of section—Stats. 1855, p. 186.

Violating conditions of undertaking—to keep ferry, is misdemeanor, Penal Code, § 387.

2851. The license tax for a ferry or bridge connecting two counties must be paid to the Treasurer of the county granting it, and the license issued by the Auditor thereof; but the Treasurer of such county must pay to the Treasury of the county in which the other end or landing of the bridge or ferry is located one-half the sum so received annually, or the Auditor may issue the license on filing with him receipts for their respective halves of the tax taken from the Treasurer of each of the two counties.

Basis of section—Stats. 1855, p. 183.

Delinquent bridge or ferry license tax—proceedings to collect instituted after thirty days, see Stats. 1872, p. 539.

2852. When a Supervisor is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, he shall not act in any of such matters. [In effect April 3, 1880.]

2853. No toll bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll bridge, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll bridge or ferry, as in this section provided, must be served upon the proprietor of the ferry or toll bridge already established at least ten days prior thereto, giving the time and place and grounds of such application.

Basis of section—Stats. 1855, p. 183; 1861, p. 307.

No toll bridge or ferry—applies equally to free bridge or one which receives indirect compensation, 6 Cal. 590; party keeping unlicensed ferry within interdicted region, held not civilly liable, 7 Cal. 126; within mile of established ferry, holder of expired license may restrain another from running ferry, 7 Cal. 117.

Unless necessary for public convenience—in discretion of body which grants licenses, 2 Cal. 262; 13 Cal. 12.

Notice to proprietor of established ferry—when not essential, 21 Cal. 459.

2854. The owner of land on either side of the waters to be crossed, and the owner of the land on the left bank descending over the owner of land on the right bank, is entitled to preference in procuring authority to construct a bridge or

ferry; but where such owner fails or neglects to apply for such authority within a reasonable time after the necessity therefor arises, the Board of Supervisors may grant such authority to another.

Owner of Land—under former statute, holder of land had same preference, 19 Cal. 150.

Preference in procuring authority—accorded to one already holding license, must be based on affirmative showing in favor of renewal, 29 Cal. 453.

2855. When there are lands necessary for the construction, erection, or use of such bridge or ferry which cannot be procured by agreement between the owner or corporation and the landowner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

Condemnation—Eminent Domain, § 44 and notes.

2856. Every licensed toll bridge or ferry must have the rates of toll as fixed by the Board of Supervisors, printed or written, posted up in some conspicuous place on or near the bridge or ferry.

2857. The proceeds of the license tax on ferries and toll bridges must be paid into the County Treasury for the use of roads and highways, or may be used by the Board of Supervisors at any time in the purchase of toll roads and toll bridges.

Basis of section—and of next, Stats. 1855, p. 187.

2858. All ferry and toll bridge keepers must keep the banks of the streams or waters at the landings of their ferries or bridges graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the Road Fund of the county,

ARTICLE II.

TOLL BRIDGES.

§ 2870. Application for leave to construct.
§ 2871. Hearing application.
§ 2872. Action of the Board of Supervisors.
§ 2873. What the Board of Supervisors may require.
§ 2874. Use of highways.
§ 2875. How constructed over navigable waters.
§ 2876. Supervisors may regulate.
§ 2877. Channel of streams navigable by rafts to be kept clear.
§ 2878. Completion of bridge, rate of toll, and license tax.
§ 2879. Persons exempt.
§ 2880. Penalty for avoiding tolls.
§ 2881. County may purchase toll bridge.

2870. Every applicant for authority to construct a toll bridge must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therein, in an adjoining county, once in each week for six successive weeks, specifying the location, the length and breadth of the bridge, and the time at which the application hereinafter required will be made. After notice is given, application must be made to the Board of Supervisors of the proper county, at any meeting specified in the notice, for authority to construct it.

Basis of section—Stats. 1870, p. 887.

2871. On the hearing, any person may appear and be heard, The Board may take testimony or authorize it to be taken by any judicial officer of the county; and it may adjourn the hearing from time to time. A copy of the articles of incorporation, certified by the Secretary of State, or by the Clerk where they are filed, must be attached to and filed with the application if made by a corporation.

Articles of incorporation—Civil Code, §§ 289, 290 *et seq.*

2872. If the Board are of opinion that the public interests will be promoted thereby, it may, by the assent of a majority of all the members of the Board, grant the application by an order entered in its minutes, and particularly describing the bridge. The applicant must cause a certified copy of the order, with a copy of the application, to be recorded in the office of the Clerk of the county before proceeding under it; *provided*, that the Board of Supervisors shall not have power to license bridges across the Sacramento or San Joaquin rivers, the Suisun bay, or Carquinez straits, the Petaluma, Napa, or Sonoma creeks, except at points above the head of navigation on said streams. [In effect March 14, 1878.]

2873. The Board of Supervisors may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character, or description, and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued.

Basis of section—Stats. 1855, p. 184.

2874. The corporation or bridge owner may use, in such manner as prescribed by the Board, so much of any public road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll houses.

2875. All bridges constructed under this Chapter crossing navigable streams must be so constructed as not to obstruct navigation, and must have a draw or swing of sufficient space or span to permit the safe, convenient, and expeditious passage at all times of any steamer, vessel, or raft which may navigate the stream or water bridged.

Basis of section—and next two, Stats. 1870, p. 888.

2876. The Board of Supervisors may, by order, regulate and govern the amount of weight and number of animals that may be driven on to a toll bridge at any one time, and prescribe rules for the government of the draws or swings and attendance of the same, and prescribe penalties for disobedience of such rules.

2877. Any one bridging a stream navigated or navigable must at all times keep the channel above and below the bridge clear from all deposits occasioned by its erection and prejudicial to such navigation, and is liable to pay to all persons unreasonably hindered or delayed in passing such bridge with rafts or vessels all damages sustained thereby.

2878. Every bridge erected under these provisions must have good and substantial railings or sidings, at least four and a half feet high. When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the Commissioner of Highways or President of the Board of Supervisors, and filed in the County Clerk's office in the county or counties in which it is located, the Directors or owner may erect a toll gate at such bridge and require such tolls as the Board of Supervisors of the county or counties from time to time prescribe. A license therefor must be issued by the Auditor of the county on giving the necessary bond and paying the license tax fixed therefor.

Basis of section—Stats. 1855, p. 183.

2879. Any person going to or from a funeral, school, performing highway labor, or attending a military parade, or Court which by law he is required to attend as a witness in a criminal case, is exempt from the payment of tolls.

Person not exempt—evading toll, fine against, Penal Code, § 389.

2880. Any person liable to pay toll forcibly or fraudulently passing the gate of a toll bridge without paying the toll is liable to a penalty of ten dollars in addition to the damages caused, to be recovered by the owner.

Basis of section—and of next, Stats. 1880, p. 888.

Passing gate of toll bridge—and evading payment, fine for, Penal Code, § 389.

2881. Within the same time, in like manner, and to the same effect as toll roads are purchased under the provisions of Sections 2802 and 2803, the county or counties, jointly acting, in which the same is situated, may purchase a toll bridge constructed under the provisions of this Chapter.

ARTICLE III.

TOLL FERRIES.

§ 2892. Application for leave to erect, and notice.
§ 2893. Duty of the Board of Supervisors.
§ 2894. Powers of the Board of Supervisors.
§ 2895. Penalties, how disposed of.

2892. Every applicant for authority to erect and take tolls on a public ferry must publish a notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, and by posting three notices in three public places in the township for four successive weeks, specifying the location and the time and place when and where the application will be made. After notice is given application must be made in writing, under oath, to the Board of Supervisors of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

Basis of section—and of next two, Stats. 1855, p. 183.

Notice—object of, 29 Cal. 457.

2893. At the hearing, proof of giving the notice, as required by the preceding section, must be made, and any person may appear and contest the application. If the Board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, and by reason of ownership of the landing or failure of the owner thereof to apply is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of twenty years.

2894. The Board of Supervisors may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character, and how propelled;

2. The number of hands, boatmen, or ferrymen to be employed, and rules for their government;

3. How many trips to be made daily;
4. When and under what circumstances to make trips in the night-time;
5. Who may be ferried free of toll;
6. In what cases of danger or peril not to cross;
7. Penalties for violation of regulations;
8. In case of steamboats, the rate of speed;
9. The method of and preference in loading and crossing; and,
10. How and by whom action must be brought to recover penalties.

2895. Penalties recovered under this Article must be paid to the County Treasury for the use of the General Road Fund of the county.

CHAPTER V.

Wharves, Chutes, and Piers.

§ 2906. Board of Supervisors to authorize construction.
§ 2907. Application, what to contain and how made.
§ 2908. Petition relative to lands not owned by applicant.
§ 2909. Notice served on non-residents.
§ 2910. Board to hear proof, and may grant authority.
§ 2911. Overflowed or tide lands granted.
§ 2912. One hundred and fifty feet on each side of wharf, etc.
§ 2913. How to obtain use of lands.
§ 2914. Dimensions of wharves, etc.
§ 2915. Franchise, what to constitute.
§ 2916. Board of Supervisors to fix rate of tolls, etc.
§ 2917. License, and the tax for.
§ 2918. To keep in good repair.
§ 2919. Restrictions on granting authority.
§ 2920. Cities and towns exempted and authorized.

2906. The Boards of Supervisors of every county in this State may grant authority to any person or corporation to construct a wharf, chute, or pier, on any lands bordering on any navigable bay, lake, inlet, creek, slough, or arm of the sea, situate in or bounding their counties respectively, with a license to take tolls for the use of the same for the term of twenty years.

Basis of section—Stats. 1858, p. 129; 1870, p. 526.

Wharf—riparian proprietor cannot maintain ejectment for that part of, which extends beyond low-water mark into the ocean, 52 Cal. 386.

2907. Application therefor must be made by publishing notice as required in Section 2892, and filing a petition in writing, containing:

1. The name and residence of the applicant; and if a corporation, a certified copy of the articles of incorporation;
2. A map of the waters, and the name and location thereof, and of the adjoining lands;
3. A plan of the wharf, chute, or pier proposed to be constructed, and of the land within three hundred feet thereof;
4. The names of the owners of the lands, and the quantity thereof sought to be used, and whether the right to use the same is or is to be acquired by the applicant;
5. The distance it is proposed to extend the wharf, chute, or pier into the waters;
6. The estimated cost of the construction of the wharf, chute, or pier; and,
7. The time when the application will be made.

Basis of section—Stats. 1858, p. 120.

Description of location of wharf and chute—in application, held not particular enough under Act in Stats. 1870, p. 526, in 48 Cal. 563.

2908. When any lands are sought to be appropriated and used for a wharf, chute, or pier, of which the applicant is not the owner, or the right of way and use thereof has not been obtained by agreement, these facts and the particular description of such land must be set forth in the petition of the applicant, and a copy of the notice of application must be served on the owner thereof by the Sheriff of the county, whose official return is conclusive evidence of service, at least ten days prior to the appointed day set for the hearing of the same.

Basis of section—Stats. 1858, p. 121; 1870, p. 527.

2909. When the owner of the land is a non-resident of the county, it is service of notice for the Sheriff to leave a copy with the occupant or agent of the owner; if none, then to place a copy in the Post Office addressed to the owner, thirty days prior to the day set for the hearing. If the owner is a minor, insane, idiot, or decedent, notice must be served on the guardian, administrator, or other legal representative of such person.

Basis of section—and of next three, Stats. 1870, p. 527.

2910. On the day named in the notice, or to which the hearing is adjourned, the Board of Supervisors must hear proof of publication and service of notice; if satisfactory, the Board must hear the allegations of the petition and any objections to the granting of the application, and proofs in support of each. If from the proofs it appear that the public good or convenience will be promoted thereby, the Board of Supervisors may grant to the applicant the right to erect or construct a wharf, chute, or pier, as prayed for, and to take tolls for the use of the same for the term of twenty years.

2911. The grant of authority made by the Board of Supervisors, as provided in the preceding section, conveys to the grantee or applicant the right of way and all necessary use for the purposes of the wharf, chute, or pier, of any of the overflowed, submerged, or tide lands belonging to the State, particularly describing the quantity thereof in the order, as also the right of way over any swamp, overflowed, marsh, or tide lands lying between the wharf, chute, or pier and high or dry land, fifty feet in width, for twenty years.

Overflowed or tide lands of State—§ 3440 *et seq.*

2912. The grant of authority herein provided for carries

; the right to have unincumbered and unobstructed the nd water on each side of the wharf, chute, or pier, from ater mark to navigable water, a distance of one hun- nd fifty feet, for the convenience of landing, loading, loading vessels, but for no other purpose.

3. Authority to construct a wharf, chute, or pier, granted, the grantee or applicant may procure from the the right of way and other necessary incidental use for arf, chute, or pier, of any of his lands, by proceedings der Title VII, Part III, of the Code of Civil Procedure. such use of the lands held adversely is obtained by nent, or by the proceedings hereinbefore mentioned, s no authority to construct a wharf, chute, or pier, or e tolls thereon.

ent domain—§ 44 and notes.

4. The wharf, chute, or pier must not be of a greater than seventy-five (75) feet, and may extend to navigable *provided*, that a wharf constructed upon any of the ble rivers, straits, sloughs, and inlets in this State may l along the shores for a distance not exceeding one nd feet, but in no case shall any wharf, chute, or pier l into the water so far as to obstruct the free navigation water on which the same is situated; *provided*, this all not apply to the water fronts of incorporated cities wns. [In effect April 16, 1880.]

s of section—Stats. 1870, p. 527.

5. The orders granting authority, and agreements, con- deeds, and decrees of Courts granting the right of way her use of lands, must be filed and recorded in the office Recorder of the county where the wharf, chute, or pier ate, and constitutes the franchise of the applicant. The the Recorder, as also the fees of the Clerk, Sheriff, and officers, for services rendered, must be paid by the ant.

s of section—and of next, Stats. 1858, p. 120.

6. The Board of Supervisors must fix the rate of tolls arfage for the use of the wharf, chute, or pier, annually, must not produce an income of less than fifteen per per annum, nor more than twenty-five per cent. per on the fair cash value of the wharf, chute, or, pier, the cost of repair and maintenance thereof, exclusive amount paid for license imposed by the next section; alue and cost of repair and maintenance to be fixed by ard of Supervisors when levying the rates of tolls or

wharfage, by hearing evidence and examining the assessment rolls of the county. When fixed, the rates must be furnished the owner, and a printed or written copy thereof conspicuously posted on the wharf, chute, or pier. [In effect March 24, 1876.]

2917. When the wharf, chute, or pier is completed, and the tolls or wharfage fixed, the owner is entitled to a license to take the tolls thereon for the term of one year, to be issued by the County Auditor on the payment of such license tax as the Board of Supervisors may fix, which, except that for the first year, must not be more than ten per cent. of the gross receipts for tolls or wharfage for the previous year, to be paid to the County Treasury for general road purposes.

2918. Any owner or keeper of a wharf, chute, or pier, who takes toll or wharfage for the use of the same when not in good repair, or is unsafe or dangerous, forfeits the sum of twenty-five dollars, to be recovered by order of the Board of Supervisors granting authority to construct it, for the use of the General Road Fund of the county, and is liable for all damages occasioned thereby.

Basis of section—Stats. 1858, p. 121.

2919. No authority must be granted under this chapter to interfere with vested rights, nor to interfere with or infringe grants heretofore made by State authority; nor does authority to construct a wharf, chute, or pier, continue for a longer period than two years, unless the same is within that time completed.

Basis of section—Stats. 1870, p. 527.

2920. The lands of the State situate in the City and County of San Francisco, and those otherwise disposed of or situate within the limits of any incorporated town or city of this State, are excluded from the provisions of this chapter. The municipal authorities of any incorporated city or town other than San Francisco may grant authority to construct wharves, chutes, and piers, as is herein provided, for the Board of Supervisors.

Basis of section—Stats. 1858, p. 129.

CHAPTER VI.

Miscellaneous Provisions relating to Public Ways.

§ 2931. Laws of the highway.
§ 2932. Driver addicted to intoxication.
§ 2933. Notice to employer of driver's intoxication.
§ 2934. Horses to be fastened while standing.
§ 2935. Penalties, how and by whom recovered.
§ 2936. Liability of owners for damages done by drivers.
§ 2937. Exceptions to preceding sections.
§ 2938. Protection of bridges.

2931. When vehicles meet, the drivers of each must turn seasonably to the right of the center of the highway, so as to pass without interference, under a penalty of twenty-five dollars for every neglect, to be recovered by the party injured. Where the whole breadth of a roadway is not worked, the center of the worked part is to be deemed the center of the highway. In time of snow, where there is a beaten track, the center of that is to be deemed the center of the highway. But this section does not apply to vehicles meeting cars running on rails or grooved tracks.

2932. No person must employ to drive any vehicle for the conveyance of passengers upon any public highway, a person addicted to drunkenness, under penalty of five dollars for every day such person is in his employment.

Intoxication—of railway driver, conductor, etc., or telegraph operator, is misdemeanor, Penal Code, § 391.

2933. If any driver, whilst actually employed in driving any such vehicle, is intoxicated to such a degree as to endanger the safety of his passengers, the owner, on receiving from any such passenger a written notice of the fact, verified by his oath, must forthwith discharge such driver; and if he has such driver in his service within six months after such notice, he incurs a like penalty.

Intoxication—of certain employés, § 2932n.

2934. The driver of any vehicle used to convey passengers must not leave the horses attached thereto while passengers remain in the same, without first securely fastening the horses or placing the lines in the hands of some other person, so as to prevent their running, under a penalty of twenty dollars for each offense.

2935. The penalties provided by the three preceding sections are to be recovered by the District Attorney of the county in which the offender resides, for the use of the County Road Fund. Any action for a penalty incurred under the last section must be commenced within six months.

2936. The owner of every vehicle running or traveling upon any road for the conveyance of passengers, is liable for all damages to persons or property done by any person in his employment as a driver while driving such vehicle, whether done wilfully or negligently, or otherwise, in the same manner as such driver would be liable.

Carriers of persons—Civil Code, § 2096 *et seq.*

Common carriers—Civil Code, § 2186 *et seq.*

2937. Nothing contained in the six preceding sections must affect any law concerning hackney coaches or carriages in any city, nor affect laws or ordinances of any city for the licensing or regulating such coaches or carriages.

2938. The owner of any toll bridge, and any plank road company owning a bridge of not less than twenty feet span, may put up conspicuously at each end of it notice in these words in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk;" and whoever rides or drives faster than a walk on such bridge forfeits to the owner the sum of five dollars.

Fast driving or riding—on toll bridges, fine for, Penal Code, § 388.

TITLE VII.

General Police of the State.

CHAPTER. I. IMMIGRATION.
II. PRESERVATION OF THE PUBLIC HEALTH.
III. REGISTRY OF BIRTHS, MARRIAGES, AND DEATHS.
IV. DISSECTION.
V. CEMETERIES AND SEPULTURE.
VI. LOST AND UNCLAIMED PROPERTY.
VII. MARKS AND BRANDS.
VIII. WEIGHTS AND MEASURES.
IX. LABOR AND MATERIALS ON PUBLIC BUILDINGS.
X. HOURS OF LABOR.
XI. TIME.
XII. MONEY OF ACCOUNT.
XIII. AUCTIONS.
XIV. FIRES AND FIREMEN.
XV. LICENSES.

CHAPTER I.

Immigration.

§ 2949. Duties of masters of vessels arriving in California.
§ 2950. Form of report.
§ 2951. Oath to be administered to certain passengers.
§ 2952. Lepers, lazarettos for.
§ 2953. Additional bond in certain cases. (Repealed.)
§ 2954. Nature of bond.
§ 2955. Lepers, examination and disposition of.
§ 2956. Action on bond.
§ 2957. Penalty for neglect to give bond.
§ 2958. Commutation Fund, where placed.
§ 2959. Fines and penalties, lien on vessel.
§ 2960. Other commutations.
§ 2961. Commutation money to be paid into State Treasury.
§ 2962. Certain vessels exempted.
§ 2963. Certain persons exempted.
§ 2964. Powers and duties of Commissioners of Immigration.
§ 2965. Same and fees.
§ 2966. Ex officio Commissioners.
§ 2967. Duties of District Attorneys. (Repealed.)
§ 2968. Bond of Commissioner.

2949. Within twenty-four hours after the arrival of any vessel arriving at any of the ports of this State, bringing passengers from any place out of this State, the master of such vessel must make on oath to the Commissioner of Immigration at such port a written report.

Police powers of State—33 Cal. 279; 42 Cal. 578; 47 Cal. 536; 54 Cal. 94; see further, Desty's Const. Cal. 232-235. Stamps on passenger tickets for emigrants, Act requiring held not a police regulation, but an unconstitutional revenue measure, 34 Cal. 492.

Chinese immigration—to be discouraged, Const. Cal. 1879, art. 19, § 4; see Desty's Const. Cal. 366. Under previous State Constitution, capitation tax on such immigrants after arrival declared to violate Federal Constitution, 20 Cal. 534; prior anti-Chinese legislation reviewed, 20 Cal. 536 *et seq.*

Importing foreign convicts—is misdemeanor, Penal Code, § 173; separate prosecution for each person landed, § 175.

Landing Chinese without permit—punishment for, Penal Code, § 174; separate prosecution for each person landed, § 175.

2950. The report must state:

1. The name, place of birth, last residence, age, and occupation of all such passengers who are not citizens, or who shall have, within the last preceding twelve months, arrived from any country out of the United States, and who have not been examined, bonded, or paid commutation money, as provided in this chapter, or have been landed from any such vessel at any place during her last voyage, or who have gone on board of any vessel with the intention of coming into this State, or who may have died during the last voyage of such vessel; and,

2. Whether any of the passengers so reported are lunatic, idiotic, deaf, dumb, blind, crippled, infirm, or are lepers, or persons affected with any of the diseases known as leprosy or elephantiasis.

3. The names and residences of the owners of such vessels. [In effect March 25, 1876.]

SUBDIVISION 2. **Lepers**—disposition of, see § 2952. Lewd or abandoned women, under amdt. 1874, included in list, and clause held to violate neither Federal Constitution nor treaty with China, 49 Cal. 402.

2951. The master or commander of the vessel must administer to any passenger of foreign birth, who declares himself a citizen of the United States, the following oath: "I, ———, do solemnly swear (or affirm) that I was born in ———; that I am a naturalized citizen of the United States; that I was naturalized and received my certificate of naturalization in the State of ———, in the year———."

2952. It shall not be lawful for lepers or persons affected with leprosy or elephantiasis to live in ordinary intercourse with the population of this State; but all such persons shall

be compelled to inhabit such lazarrettos or lepers' quarters as may be assigned to them by the Board of Supervisors of the city or county in which they shall be domiciled or settled, and the Board of Supervisors are vested with power and are required to make all necessary provisions for the separation, detention, and care of lepers or persons affected with leprosy or elephantiasis, settled or domiciled in their respective cities or counties. The Superintendent or manager of all lepers' quarters under this chapter shall forward quarterly statements, showing the name, age, sex, and birth-place of each leper in such quarter, to the Secretary of State, who shall keep a proper record of such matters for the information of the public. [In effect March 25, 1876.]

2953. Repealed. [Approved March 30; in effect July 6, 1874.]

2954. The bond required by the next preceding section, must be a separate bond for each passenger, and the same sureties must not be upon more than one bond. Each bond must be secured by two or more sufficient sureties, residents of the State, each of whom must prove, before the Commissioner of Immigration, by oath or otherwise, indorsed in writing on such bond, that he is a freeholder and resident of the State, and is worth double the amount of the penalty of the bond in real estate, over and above all his debts and liabilities. The bond may, at the option of the party, be secured by mortgage on real estate, or by the pledge and transfer of United States bonds, or Controller's warrants of this State in any amount sufficient to secure the same. [Approved March 30; in effect July 6, 1874.]

General basis of section—Stats. 1852, p. 79.

Next preceding section—perhaps § 2952, which contained requirement of bond before its repeal in 1874, when single new section 2952 (afterwards amd. 1876), was substituted for it and § 2953.

2955. The Commissioner of Immigration must satisfy himself whether or not any person who shall arrive in this State, by vessel from any foreign port or place, is a leper, or affected with the disease known as leprosy or elephantiasis, before such person shall mingle with the population of this State. For the purpose of ascertaining said fact the Commissioner is vested with the power and authority to detain all such persons on board any such vessel so arriving, and to assign the vessel to a berth or anchorage separate and apart from other vessels, and at a safe and suitable distance from the shore, if in his judgment it shall be necessary, until such fact can be fully ascertained by him. Such fact shall be ascertained by personal inspection and examination of each and

every person on board such vessel; and the Commissioner of Immigration is authorized, empowered, and required to make such personal inspection and examination of all persons so arriving by any such vessel, the same to be made at such berth or anchorage as he shall, in his discretion, assign to such vessel for that purpose, and shall be made before the landing of any person thereupon. All of such persons who, upon inspection and examination, are found to be lepers, or affected with the disease known as leprosy or elephantiasis, shall be taken in charge by the Commissioner of Immigration, and placed in a suitable lazaretto, or lepers' quarter, to be provided or designated by the Board of Supervisors, whenever necessary for that purpose, as hereinbefore prescribed, and there detained and properly cared for, separate and apart from the general population of this State, so long as they, the said lepers, shall elect to remain in the State of California, or until they shall have recovered from said disease, and no longer. All of such persons as shall be found to be free from said disease shall be allowed to depart and go at their will, without unnecessary detention or delay, and shall be entitled to receive a certificate of the fact of their freedom from said disease from said Commissioner. For his services in making such examination and inspection the Commissioner of Immigration shall demand and collect from the master, owner, or consignee of such vessel the sum of seventy cents in U. S. gold or silver coin, for each and every person so examined or inspected, which sum, except four thousand dollars a year and expenses of office, shall, when required for such purpose, be paid by the Commissioner into the State treasury, to be used in the maintenance, when necessary, of such lazarettos or lepers' quarters as shall be constructed under this law. Any master, owner, or consignee of any vessel arriving at any port of this State who shall fail or refuse to perform, or permit the performance of, any of the acts or things required by this chapter, or to take and occupy with his vessel the berth or anchorage assigned for the same by the Commissioner, pending the examination and inspection herein provided for, or who shall permit or allow any person arriving in such vessel to depart therefrom, and to communicate, mingle, or associate with the population of this State or any part thereof, until after such examination and inspection by the Commissioner is had, shall, for every such act or omission, forfeit to the Commissioner of Immigration the sum of one thousand dollars in U. S. gold coin, to be sued for and recovered by suit in any Court of competent jurisdiction, and to be applied in like manner with the fees. And any master, owner, or consignee of any such vessel so arriving, who shall refuse or neglect to pay or cause to be paid to said Commissioner the fee of seventy cents for the examination and inspection of each and every

person so arriving in such vessel, shall forfeit to said Commissioner, for each case, the sum of five hundred dollars in U. S. gold coin, to be recovered and applied as above. And the Commissioner shall have a lien upon the vessel, and the same shall be sold to pay any judgment recovered under this act. The Commissioner shall have the power to call in the aid of the Sheriff and all police authorities to assist in enforcing this law. And he may appoint one or more deputies under him, who shall be invested with all the powers of the Commissioner and may discharge his official duties when required by him. The Commissioner of Immigration must prepare and transmit to the Secretary of State quarterly statements, certified under his hand and seal, showing the name, age, sex, birth-place, and present residence of every leper, or person affected with leprosy or elephantiasis, examined or inspected by him, as well as any other information or fact touching the character and prevalence of said disease within his knowledge. [In effect March 25, 1876.]

2956. If any person for whom a bond has been given under this chapter, within the time specified in such bond, becomes chargeable upon any city, town, or county of this State, an action may be brought upon such bond in the name of the people of this State, by the District Attorney of the county. The plaintiff in the action is entitled to recover upon such bond, from time to time, so much money, not in the whole exceeding the penalty of such bond, exclusive of costs, as may be sufficient to defray the expense incurred by any such city, town, or county, for the maintenance and support of the person for whom the bond may have been given. The amount of such recovery may be collected from the sale of the real estate or other security mortgaged, pledged, or deposited therefor, in conformity with this chapter.

Basis of section—Stats. 1852, p. 80.

2957. If any person or consignee neglects or refuses to give any of the bonds required by this chapter within three days after the landing of such passenger, or the indorsement of the Commissioner, or does not within that time make the commutation authorized by Section 2955, he is liable to the State of California in the penal sum of one thousand dollars for each passenger on whose account such bond may have been required, or for whom such commutation might have been made under this chapter.

Commutation authorized—by § 2955, before its repeal in 1874. In 1876 it was re-enacted as given above.

2958. All moneys received in commutation of bonds, and

paid into the State Treasury, must be placed to the credit of the General Fund. [In effect March 7, 1874.]

Commutation of bonds—see § 2960.

2959. For all fines and penalties imposed by this chapter upon any master or commander, owner or consignee, for any omission, neglect, or refusal to perform any act or duty required by this chapter, such vessel is liable; and the amount of such fines or penalties are a lien upon such vessel, and have priority over all other liens, except those for seamen's wages, bottomry bonds, and respondentia. Such penalties and fines may be sued for and recovered in a civil action, with costs of suit, by the Commissioner, or by his authorized attorney, in the name of the people of the State of California, in any Court having cognizance thereof, and when recovered must, after deducting the expenses, be paid into the State Treasury.

Actions against vessels, etc.—Code Civ. Proc., §§ 813-827.

Importing forbidden persons—punishment for, see Penal Code, §§ 173-175.

2960. The Commissioner may compound or commute, for any of the penalties or fines, upon such terms as he thinks proper, and at the end of every month report to the Controller of State the reasons and causes of such compounding or commutation. He may also compound or commute, with the owner or consignee of any vessel, for any bond required to be given by such owner or consignee for such passengers as have been paupers in any other country, or who, from their condition at the time of their arrival in this State, or from sickness or disease at the time of their leaving the port of departure, are a public charge, or likely soon to become so; such commutation to be fixed by the Commissioner at such sum as he may deem sufficient to defray the necessary expenses of such persons during the continuance of their then sick, disabled or infirm state.

Basis of section—Stats. 1853, p. 273.

2961. The Commissioner receiving any commutation money, or any moneys from fines or penalties, under this Chapter, must account for and pay the same, less twenty per cent, which he may retain as his compensation, on the first Tuesday of every month, to the Treasurer of State, in the same manner in which County Treasurers account. He must specify in his account the names of the parties paying each sum of money, the date of such payment, for what paid, or the name of the vessel and the number of passengers on account of whom it was paid, or annex thereto an affidavit of its correctness. The Commissioner must also furnish to the parties paying any commutation money, or any money from other

sources, receipts in duplicate, specifying the amount paid, the name of the vessel, and the number of passengers on account of whom or for what it was paid. [Approved March 30; in effect July 6, 1874.]

Commutation money—see § 2960.

2962. Masters of vessels arriving at any of the ports of this State from any port in this State, or from Oregon, or Washington Territory, are exempt from making the statement required by this Chapter when the vessels in which they arrive have not taken on board at their port of departure, or at any intermediate port, any alien passenger, to be landed at the port of arrival; and masters of vessels arriving from Panama are also exempted from the provisions of this Chapter when they have not landed, or are not about to land, passengers who took their departure from ports other than the port of New York; and in no case must such master be required to report any passenger other than way passengers taken on board between the port of New York and the port of arrival in this State.

2963. The Consuls, Ministers, agents, or other public functionaries of any foreign Government, arriving in this State in their official capacity, are exempt from the provisions of this Chapter.

Basis of section—Stats. 1862, p. 487.

Notaries Public—attendance of witness before, § 794, subd. 3, and note.

2964. The Commissioner of Immigration must approve all bonds and administer all oaths required in the discharge of his duties. Whenever it appears that the master or commander of any vessel has not made a full and correct report, as provided by this Chapter, the Commissioner must inquire into the same, and for that purpose may require the attendance of witnesses before him in the same manner as Notaries Public may in civil cases. Testimony so taken may be read as evidence on the trial of any action commenced for any penalty or forfeiture accruing under the provisions of this Chapter in the same manner and with the like effect as if regularly taken in such action.

Basis of section—Stats. 1863, pp. 150, 151; 1870, p. 331.

2965. The Commissioner of Immigration must prepare all bonds required to be given by the owners or consignees, masters, captains, or commanders of vessels, and administer the oaths to the sureties upon such bonds, and for each bond he may charge and collect a fee of three dollars, and for the administration of each oath he may charge one dollar; and if he neglects to administer the oaths to such sureties, or to re-

quire them to justify on each bond, as required herein, or if he demands or receives any other or larger fees, commissions, or compensation for services than is expressly allowed in this Chapter, he shall pay to the State of California the penal sum of one hundred dollars for each offense.

Bond and sureties--§ 2954.

Basis of section—Stats. 1862, p. 487; 1870, p. 331.

2966. In all the ports in this State other than San Francisco the Mayor or chief municipal officer at such port, or if there be none such, then the Sheriff of that county is ex officio Commissioner of Immigration for such port, and in carrying out the provisions of this Chapter, and has all the powers and is liable to all the penalties provided herein.

Basis of section—Stats. 1862, p. 487.

2967. Section twenty-nine hundred and sixty-seven of said Code is repealed. [Approved March 30; in effect July 6, 1874.]

2968. The Commissioner of Immigration for the Port of San Francisco must execute an official bond in the sum of twenty-five hundred dollars. [In effect March 25, 1876.]

Official bonds--§ 947 *et seq.*

Twenty-five hundred dollars--before amdt. 1876, "hundred" read "thousand."

CHAPTER II.

Preservation of Public Health.

ARTICLE I. STATE BOARD OF HEALTH.
II. VACCINE AGENT.
III. HEALTH AND QUARANTINE REGULATIONS FOR THE CITY AND HARBOR OF SAN FRANCISCO.
IV. HEALTH REGULATIONS FOR THE CITY OF SACRAMENTO.
V. HEALTH AND QUARANTINE OF OTHER CITIES, TOWNS, AND HARBORS.

ARTICLE I.

STATE BOARD OF HEALTH.

§ 2978. Who constitute the State Board.
§ 2979. Duties of.
§ 2980. To report as to the effect of intoxicating liquors.
§ 2981. Meetings, and election of officers.
§ 2982. Duties of Secretary. Salary of Secretary.
§ 2983. Expenses of, limited.

2978. The State Board of Health consists of seven physicians—two of the City of Sacramento, and five from other portions of the State—appointed by the Governor for the term of four years.

Basis of article—Stats. 1870, p. 329.

State Board of Health—Legislature to provide for maintenance and efficiency of, art. 20, § 14. Committee from, to select State quarantine grounds and station, Senate Joint Resolution No. 6, in Stats. 1881, p. 100. Report of, §§ 332, 334, 335: number of members composing, § 343: appointment and term, §§ 368, subd. 2, 369. State Board of Viticultural Commissioners constituted Board of Health in respect to diseases of grapevines and to vine pests, Stats. 1881, p. 51.

2979. The State Board of Health must place themselves in communication with the local Boards of Health, hospitals, asylums, and public institutions throughout the State, and take cognizance of the interests of health and life among the citizens generally. They must make sanitary investigations and inquiries respecting the causes of disease, especially of epidemics, the source of mortality, and the effects of locali-

ties, employments, conditions, and circumstances on the public health, and gather such information in respect to these matters as they may deem proper for diffusion among the people. They may devise some scheme whereby medical and vital statistics of sanitary value can be obtained, and act as an Advisory Board to the State in all hygienic and medical matters, especially such as relate to the location, construction, sewerage, and administration of prisons, hospitals, asylums, and other public institutions. They must, at each biennial session of the Legislature, make a report, with such suggestions as to legislative action as they deem proper.

Wilful violation of health laws—punishment for, Penal Code, § 377.

Failing to perform duty—required under laws for preservation of health, if wilful, is misdemeanor, Penal Code, § 388.

2980. The Board must examine into and report what, in their best judgment, is the effect of the use of intoxicating liquor as a beverage upon the industry, prosperity, happiness, health, and lives of the citizens of the State; also, what legislation, if any, is necessary in the premises.

Legislation against intoxicating liquors—Conductor on railroad train, etc.: intoxication of, is misdemeanor, Penal Code, § 391. Driver of vehicles for passengers, addicted to drunkenness, not to be employed, see §§ 2932, 2933 hereof; on railroad train, intoxication of, is misdemeanor, Penal Code, § 391. Election days, sale prohibited on, Stats. 1874, p. 297. Engineer, locomotive: intoxication of, is misdemeanor, Penal Code, § 391. Female: not to sell at theatres, etc., Penal Code, § 304; not to be performer at saloons, etc., where sold, Penal Code, § 306; but see Const. Cal. 1879, art. 20, § 18, and ex parte Mary Maguire, April 13, 1881, 7 P. C. L. J. 357. Local Option Law, Stats. 1874, p. 434, declared unconstitutional in 48 Cal. 279, repealed by Stats. 1876, p. 10. Minors: not to be sold to, Stats. 1872, p. 231; not to be allowed to frequent saloons where sold, Stats. 1878, p. 812. Officers, public: intoxication of, is misdemeanor, Stats. 1880, p. 265 or 77. Physician, intoxicated: endangering life, is guilty of misdemeanor, Penal Code, § 386. Public institutions: not to be sold near various, Stats. 1874, pp. 12, 27; 1876, p. 691; nor in State Capitol building, Stats. 1880, p. 273 or 80. Retail liquor account: of over five dollars, not to be collected, Stats. 1874, p. 509. Sundays: sale at places of amusement, forbidden on, Penal Code, § 299. Telegraph operator: intoxication of, is misdemeanor, Penal Code, § 391: Theatres: sale forbidden at, Penal Code, § 303. Train dispatcher: intoxication of, is misdemeanor, Penal Code, § 391.

2981. The Board must meet at the Capital of the State, at least once in every three months. They must elect from their own number a President and a permanent Secretary; the latter must reside at the Capital, and is their executive officer. No member, except the Secretary, receives any compensation; but the actual traveling expenses of the members, while engaged in the duties of the Board, are allowed, and paid out of the General Fund.

2982. The Secretary must superintend the work and per-

form such other duties as the Board may require. He must furnish the Legislature, when in session, such information cognate to this chapter as, from time to time, may be necessary. An annual salary of twenty-five hundred dollars, and his office and other necessary expenses incurred in the performance of his duties, must be paid to him in the same manner as salaries of State officers are paid.

2983. The expenses of the Board, including the salary of the Secretary, must not exceed four thousand dollars per annum.

ARTICLE II.

VACCINE AGENT.

§ 2993. Agent to obtain genuine vaccine matter.
§ 2994. Compensation and duty of.

2993. The Vaccine Agent must obtain a supply of the genuine vaccine matter, and preserve the same for the use and benefit of the citizens of this State.

Basis of article—Stats. 1852, p. 138.

2994. Such Agent must furnish genuine vaccine matter, approved by the State Board of Health, to any regular practicing physician in good standing in his profession in this State. He may charge and receive for every parcel of vaccine matter furnished the sum of five dollars, which is in full compensation for his services and expenses.

ARTICLE III.

HEALTH AND QUARANTINE REGULATIONS FOR THE CITY AND HARBOR OF SAN FRANCISCO.

§ 3004. Quarantine grounds, location of.
§ 3005. Board of Health of San Francisco.
§ 3006. Mayor ex officio President. Time of meeting.
§ 3007. Health officer. His election.
§ 3008. Powers of.
§ 3009. Appointment of certain officers.
§ 3010. Compensation of officers and employés.
§ 3011. Expenses of Health officer.
§ 3012. General powers of Board of Health.
§ 3013. Shipmasters to report infected vessels
§ 3014. Passengers and freight, permit to land.
§ 3015. Duties of pilots.
§ 3016. Penalty for neglect of masters.
§ 3017. Vessels subject to quarantine.

§ 3018. Examination and inspection of vessels.
§ 3019. Passengers not to be landed without permit.
§ 3020. Fees of Quarantine Officer.
§ 3021. Compulsory vaccination.
§ 3022. Hospitals to be provided.
§ 3023. Records of births, deaths, and interments.
§ 3024. Returns of births, deaths, etc., of children.
§ 3025. No bodies to be interred without permit.
§ 3026. Return of interments to be made.
§ 3027. Bodies not to be removed without permit.
§ 3028. Nuisances on premises of non-residents.
§ 3029. Health Officer to keep fee book.
§ 3030. Bond of Health Officer.
§ 3031. Officers empowered to administer oaths.
§ 3032. Actions, in whose name maintained.
§ 3033. Vacation of infected and dangerous houses.
§ 3034. Physician to report infectious diseases.
§ 3035. Board of Health to have charge of cemetery.

3004. The quarantine grounds of the Bay and harbor of San Francisco are at the anchorage of Saucelito.

Original basis of article—Stats. 1870, p. 716.

Quarantine grounds—and station for State, to be selected by committee from State Board of Health, see Resolution in Stats 1891, p. 100.

Quarantine service—of the port of San Francisco, appropriation to purchase steam launch for, Stats. 1881, p. 77.

3005. The Board of Health for the City and County of San Francisco consists of the Mayor of the city and county and four physicians in good standing, residing in the City and County of San Francisco, appointed by the Governor and holding their offices for the term of five years.

3006. The Mayor is ex officio President of the Board. The Board must meet monthly, and at such other times as the President may direct. In the absence of the President, the Board may elect a Chairman, who is clothed with the same powers as the President.

3007. The Health Officer for the City and County and Port of San Francisco is elected by the Board of Health, and holds office at its pleasure. He must be a graduate of some medical college, in good standing, and must reside within the city limits of San Francisco.

3008. The Health Officer is the executive officer of the Health Department, and he may, in his discretion, cause the removal to a hospital of any and all persons, within the limits of the City and County of San Francisco, infected with variola. [In effect March 9, 1878.]

3009. The Board of Health must appoint a Quarantine Officer, who shall be a physician in good standing, a Secretary, one Assistant Secretary, six Health Inspectors, one Market

Inspector, and one Messenger, whose duties must be fixed by the Board of Health. They must also appoint one Superintendent Physician, one Resident Physician, one Stewart, one Matron, one Apothecary, two Visiting Physicians, two Visiting Surgeons, as officers of the City and County Hospital in and for the City and County of San Francisco, one each of said Visiting Physicians and Surgeons to be nominated by the Faculty of the Medical Department of the University of California, and one each of said Visiting Physicians and Surgeons to be nominated by the Medical College of the Pacific. Said Board may also appoint one Engineer for the City and County Hospital. They may also appoint one Superintendent, one Resident Physician, one Matron, and such other employees as are now authorized by law to be employed in and for the Alms-house of said city and county. They shall also have power to appoint and prescribe the duties of one City Physician and one Assistant City Physician, who shall be designated as Police Surgeons, and whose duty it shall be to make all autopsies required of them by the Coroner of said city and county. And said Board is also empowered to appoint such employees and such medical attendants as they may deem necessary in the Health Department, and in all the various institutions which are by law placed under their supervision; and the compensation of such employees and medical attendants shall be fixed by the Board of Health. The appointing power aforesaid is vested solely in said Board of Health, and said Board shall have power to prescribe the duties of said appointees, and shall not remove the same without just cause. The heads of departments appointed by the Board of Health, to wit, the Health Officer, Resident Physician of City and County Hospital, and Superintendent of Alms-house, shall not be removed except by a concurrence of four members of said Board of Health. [In effect March 9, 1878.]

3010. The following annual salaries are hereby allowed to the officers of the Health Department, and such other officers and employees as are mentioned in the preceding section, viz.: Health Officer, three thousand dollars; Quarantine Officer, eighteen hundred dollars; Secretary, twenty-one hundred dollars; Assistant Secretary, twelve hundred dollars; Health Inspectors, twelve hundred dollars each; Market Inspector, twelve hundred dollars; Messenger, nine hundred dollars; City Physician, eighteen hundred dollars; Assistant City Physician, twelve hundred dollars; all of said salaries, together with the salaries of such other employees of the Health Department as may be appointed by the Board of Health, must be paid in equal monthly installments out of the General Fund of the City and County of San Francisco, in the same manner as the salaries of the other officers of said city

and county are paid. There shall be paid to the officers and employees of the City and County Hospital and Alms-house the following annual salaries, viz.: Superintendent Physician, twenty-four hundred dollars; Resident Physician, fifteen hundred dollars; Steward, fifteen hundred dollars; Matron, seven hundred and twenty dollars; one Apothecary, twelve hundred dollars; Visiting Physicians and Surgeons, twelve hundred dollars each; Engineer, twelve hundred dollars; Superintendent of Alms-house, twenty-four hundred dollars; Resident Physician of Alms-house, fifteen hundred dollars; Matron of Alms-house, seven hundred and twenty dollars; and all other medical attendants and employees of said institutions are to be paid such sums as may be authorized by law, and as provided in the preceding section; all to be paid in equal monthly installments out of the Hospital and Alms-house Fund of said City and County of San Francisco; and the Auditor of said city and county is hereby directed to audit the said demands, payable out of the funds aforesaid, upon the approval of the same by the said Board of Health, and also to audit all demands for salaries of medical attendants and employees appointed by the Board of Health in accordance with this Chapter, for the amounts authorized to be paid, when the same shall have been approved by said Board; and the Treasurer of said city and county must pay said demands out of said funds. The Clerk of the Mayor of the City and County of San Francisco shall not receive any compensation as Clerk of the Board of Health. [In effect March 9, 1878.]

3011. The Health Officer, in addition to his salary, receives such sums for the necessary expenses of his office as the Board of Health may direct, and the Auditor must audit and the Treasurer pay such sums out of the General Fund. The Board of Supervisors must provide proper offices for the Health Department.

3012. The Board of Health have general supervision of all matters appertaining to the sanitary condition of the city and county, including the City and County Hospital, the County Jail, Alms-house, Industrial School, and all public health institutions provided by the City and County of San Francisco; and may adopt such orders and regulations, and appoint or discharge such medical attendants and employees, as to them seems best to promote the public welfare; and may appoint as many Health Inspectors as they deem necessary in time of epidemics.

3013. Shipmasters bringing vessels into the Harbor of San Francisco, and masters, owners, or consignees having vessels in the harbor which have on board any cases of Asiatic

cholera, small-pox, yellow, typhus, or ship fever, must report the same, in writing, to the Quarantine Officer before landing any passengers, casting anchor, or coming to any wharf, or as soon thereafter as they, or either of them, become aware of the existence of either of the diseases on board of their vessels. [In effect March 9, 1878.]

3014. No captain or other officer in command of any vessel sailing under a register, arriving at the Port of San Francisco, nor any owner, consignee, agent, or other person having charge of such vessel must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land, or permit to be landed, any freight, passengers, or other persons from such vessel until he has reported to the Quarantine Officer, presented his bill of health, and received a permit from that officer to land freight, passengers, or other persons. [In effect March 9, 1878.]

3015. Every pilot who conducts into the Port of San Francisco any vessel subject to quarantine or examination by the Quarantine Officer, must:

1. Bring the vessel no nearer the city than is allowed by law.
2. Prevent any person from leaving, and any communication being made with the vessel under his charge, until the Quarantine Officer has boarded her and given the necessary orders and directions.
3. Be vigilant in preventing any violation of the quarantine laws, and report, without delay, all such violations that come to his knowledge to the Quarantine Officer.
4. Present the master of the vessel with a printed copy of the quarantine laws, unless he has one.
5. If the vessel is subject to quarantine, by reason of infection, place at the mast-head a small yellow flag. [In effect March 9, 1878.]

3016. Every master of a vessel subject to quarantine or visitation by the Quarantine Officer, arriving in the Port of San Francisco, who refuses or neglects either:

1. To proceed with and anchor his vessel at the place assigned for quarantine, when legally directed so to do; or,
2. To submit his vessel, cargo, and passengers to the Quarantine Officer, and furnish all necessary information to enable that officer to determine what quarantine or other regulations they ought respectively to be subject; or,
3. To report all cases of disease and of deaths occurring on his vessel, and to comply with all the sanitary regulations of the bay and harbor—

Is liable in the sum of five hundred dollars for every such neglect or refusal. [In effect March 9, 1878.]

Like failure by master—punishment for, Penal Code, § 376.

3017. All vessels arriving off the Port of San Francisco from ports which have been legally declared infected ports, and all vessels arriving from ports where there is prevailing at the time of their departure, any contagious, infectious, or pestilential diseases, or vessels with decaying cargoes, or which have unusually foul or offensive holds, are subject to quarantine, and must be, by the master, owner, pilot or consignee, reported to the Quarantine Officer without delay. No such vessel must cross a right line drawn from Meiggs' Wharf to Alcatraz Island until the Quarantine Officer has boarded her and given the order required by law. [In effect March 9, 1878.]

3018. The Quarantine Officer must board every vessel, subject to quarantine or visitation by him, immediately on her arrival, make such examination and inspection of vessel, books, papers, or cargo, or of persons on board, under oath, as he may judge expedient, and determine whether the vessel should be ordered to quarantine, and if so, the period of quarantine. [In effect March 9, 1878.]

3019. No captain or other officer in command of any passenger-carrying vessel of more than one hundred and fifty tons burden, nor of any vessel of more than one hundred and fifty tons burden, having passengers on board, nor any owner, consignee, agent, or other person having charge of such vessel or vessels, must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land or permit to be landed, any passenger from the vessel until he has presented his bill of health to the Quarantine Officer and received a permit from that officer to land such passenger, except in such cases as the Quarantine Officer deems it safe to give the permit before seeing the bill of health. [In effect March 9, 1878.]

3020. The following fees may be collected by the Quarantine Officer: For giving a permit to land freight or passengers, or both, from any sailing vessel of less than five hundred tons burden, from any port out of this State, two dollars and fifty cents; over five hundred and under one thousand tons burden, five dollars; each additional one thousand tons burden or fraction thereof, an additional two dollars and fifty cents; for steam vessels, propelled in whole or in part by steam, of one thousand tons burden or less, five dollars, and two dollars and fifty cents for each additional one thousand

tons burden or fraction thereof; but vessels not propelled in whole or part by steam, sailing to and from any port or ports of the Pacific States, of the United States, or Territories, and whaling vessels, entering the harbor of San Francisco, are excepted from the provisions of this section. [In effect March 9, 1878.]

3021. The Board of Health may enforce compulsory vaccination on passengers in infected ships or coming from infected ports.

3022. The Board of Health may provide suitable hospitals, to be situated at or near Saucelito, and furnish and supply the same with nurses and attaches, and remove thereto all persons afflicted with cholera, smallpox, yellow, typhus, or ship fever.

3023. The Health Officer must keep a record of all births, deaths, and interments occurring in the City and County of San Francisco. Such records, when filled, must be deposited in the office of the County Recorder, and produced when required for public inspection.

3024. Physicians and midwives must, on or before the fourth day of each month, make a return to the Health Officer of all births, deaths, and the number of still-born children occurring in their practice during the preceding month. In the absence of such attendants, the parent must make such report within thirty days after the birth of the child. Such returns must be made in accordance with rules adopted, and upon blanks furnished by the Board of Health. [In effect March 9, 1878.]

3025. No person shall deposit in any cemetery, or inter in the City and County of San Francisco, any human body, without first having obtained and filed with the Health Officer a certificate, signed by a physician or midwife, or a Coroner, setting forth, as near as possible, the name, age, color, sex, place of birth, occupation, date, locality, and the cause of death of the deceased, and obtain from such Health Officer a permit; nor shall any human body be removed or disinterred without the permit of the Health Officer, or by order of the Coroner. Physicians, when deaths occur in their practice, must give the certificate herein mentioned. Hereafter it shall be the duty of the Assistant City Physician, or Police Surgeons, to perform all autopsies which may be required in the Coroner's office of the City and County of San Francisco, all such autopsies being made without charge to the city. It shall be the duty of the Health Officer to see that the dead

body of a human being is not allowed to remain in any public receiving vault for a longer period than five days. At the expiration of that time he shall cause the body to be placed in a vault or niche constructed of brick, stone, or iron, and hermetically sealed. It shall also be his duty to require all persons having in charge the digging of graves and burial of the dead to see that the body of no human being who had reached ten years of age shall be interred in a grave less than six feet deep, or if under the age of ten years, the grave to be not less than five feet deep. [In effect March 9, 1878.]

3026. Superintendents of cemeteries, within the boundaries of the City and County of San Francisco, must return to the Health Officer, on each Monday, the names of all persons interred or deposited within their respective cemeteries for the preceding week. [In effect March 9, 1878.]

3027. No Superintendent of a cemetery can remove or cause to be removed, disinter or cause to be disinterred, any corpse that has been deposited in the cemetery, without a permit from the Health Officer, or by order of the Coroner.

3028. Whenever a nuisance shall exist on the property of any non-resident or any property, the owner or owners of which cannot be found by either Health Inspector, after diligent search, or on the property of any owner or owners, upon whom due notice may have been served, and who shall, for three days, refuse or neglect to abate the same, or on any city property, it shall be the duty of the Board of Health to cause the said nuisance to be at once removed or abated, and to draw upon the General Fund for such sums as may be required for its removal or abatement, not to exceed two hundred dollars; *provided*, that whenever a larger expenditure is found necessary to be made for the removal or suppression of any nuisance, the Board of Supervisors of said city and county shall, upon the written application of the Board of Health, by ordinance, appropriate, allow, and ordered paid out of the General Fund, such sum or sums as may be necessary for that purpose, and the Auditor shall audit, and the Treasurer shall pay all appropriations of money made in pursuance of this section, in the same manner as is now provided by law for auditing and paying demands upon the treasury; said sum or sums so paid shall become a lien on the property from which said nuisance has been removed or abated in pursuance of this section, and may be recovered by an action against such property. And it shall be the duty of the City and County Attorney to foreclose all such liens in the proper Court, in the name of and for the benefit of said city and county, and when the property is sold enough

of the proceeds shall be paid into the city and county treasury to satisfy the lien and costs, and the overplus, if any there be, shall be paid to the owner of the property, if he be known, and if not, then into the Court for his use when ascertained. The Board of Health is hereby vested with power to act upon, define, determine, and adjudge what shall constitute a nuisance in said city and county, and to require the same to be abated in a summary manner. Any person who maintains, permits, or allows a nuisance to exist upon his or her property or premises, after the same has been determined by said Board to be a nuisance, and after notice to remove the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and each day of such existence, after notice, shall be deemed a separate and distinct offense, and it is the duty of the Health Officer to prosecute all persons guilty of violating this law by continuous prosecutions until the same is abated and removed. [In effect March 9, 1878.]

3029. The Health Officer must keep in his office a book in which he must make an entry of all fees collected by him. He must pay all fees collected to the City and County Treasurer weekly, to the credit of the General Fund.

3030. The Health Officer must execute an official bond, to be approved by the Board of Health, in the sum of ten thousand dollars.

Official bonds—§ 947 *et seq.*

3031. Any member of the Board of Health, Health Officer, or Quarantine Officer, or Secretary, or Assistant Secretary of the Health Department, is empowered to administer oaths on business connected with that Department. [In effect March 9, 1878.]

3032. Whenever any cause of action arises under any of the provisions of this chapter, suit may be maintained therein, in the name of the Health Officer, in any District Court of this State.

District Court—superseded by Superior Court (see Code Civ. Proc., §§ 65-79), pursuant to Const. Cal. 1879, art. 22, § 3.

3033. Whenever it shall be certified to the Board of Health, by the Health Officer, that any building, or part thereof, is unfit for human habitation, by reason of its being so infected with disease as to be likely to cause sickness among the occupants, or by reason of its want of repair has become dangerous to life, said Board may issue an order, and cause the same to be affixed conspicuously on the building, or part

thereof, and to be personally served upon the owner, agent or lessee, if the same can be found in this State, requiring all persons therein to vacate such building, for the reasons to be stated therein as aforesaid. Such building, or part thereof, shall, within ten days thereafter be vacated, or within such shorter time, not less than twenty-four hours, as in said notice may be specified; but said Board, if it shall become satisfied that the danger from said house, or part thereof, has ceased to exist, may revoke said order, and it shall thenceforward become inoperative. [In effect March 9, 1878.]

3034. *One*—Every physician in the city and county shall report to the Health Officer, in writing, every patient he shall have laboring under Asiatic cholera, variola, diphtheria, or scarlatina, immediately thereafter, and report to the same officer every case of death from such disease, immediately after it shall have occurred.

Two—Every household in said city and county shall forthwith report, in writing, to the Health Officer, the name of every person boarding or an inmate at his or her house, whom he or she shall have reason to believe sick of cholera or smallpox, and any deaths occurring at his or her house from such disease. [In effect March 9, 1878.]

3035. The Board of Health shall have entire charge of the City Cemetery, and shall employ a Superintendent, at a salary of seventy-five dollars per month, the same to be paid as the salaries of other employees are paid. [In effect March 9, 1878.]

ARTICLE IV.

HEALTH REGULATIONS FOR THE CITY OF SACRAMENTO.

§ 3042. Board of Health, who and how appointed.
§ 3043. Term of office.
§ 3044. Powers of the Board of Health.
§ 3045. Pest houses, how located and conducted.
§ 3046. Death records.
§ 3047. Enforcement of regulations. Health Officer.
§ 3048. Expenses, how paid.
§ 3049. Compensation, how fixed.

3042. The Board of Trustees of the City of Sacramento may establish by ordinance a Board of Health therefor, to consist of five practicing physicians, graduates of a medical college of recognized respectability; and the President of the Board of Trustees is ex officio President of the Board.

General basis of article—Stats. 1870, p. 452; also for this section, Stats. 1868, p. 403.

Dispensary in Sacramento—Act to establish and maintain, Stats. 1872, p. 531.

3043. The members of the Board hold their offices at the pleasure of the appointing power.

3044. The Board of Health of the City of Sacramento has a general supervision of all the matters appertaining to the sanitary condition of the city, and may make such rules and regulations in relation thereto as are not inconsistent with law.

3045. The Board of Health may locate and establish pest houses, and cause to be removed thereto, and kept, any person having a contagious or infectious disease; may discontinue or remove the same, and make such rules and regulations regarding the conduct of the same as are needful.

Basis of section—Stats. 1853, p. 35.

3046. The Board of Health must exercise a general supervision over the death records of the City of Sacramento, and may adopt such forms and regulations for the use and government of physicians, undertakers, and superintendents of cemeteries, as in their judgment may be best calculated to secure reliable statistics of the mortality in the city and prevent the spread of disease.

3047. The Board of Trustses of the City of Sacramento must, by ordinance or otherwise, provide for enforcing such orders and regulations as the Board of Health may from time to time adopt; and in times of epidemics, or when deemed necessary by the Board of Health, a Health Officer must be employed to enforce the laws in relation to the sanitary condition of the city.

3048. All expenses necessarily incurred in carrying out the provisions of this article must be provided for by the Board of Trustees of the City of Sacramento, who may make appropriation therefor out of the Special Street Fund, if the same is sufficient; if not, they may by taxation provide a Fund therefor.

3049. The Board of Trustees must fix the compensation of the Board of Health and the Health Officer.

ARTICLE V.

HEALTH AND QUARANTINE OF OTHER CITIES, TOWNS, AND HARBORS.

§ 3059. Boards of Supervisors, may adopt Article III.
§ 3060. Boards of Supervisors may adopt Article IV.
§ 3061. Board of Health established in towns and cities.
§ 3062. May appoint Health Officer in lieu of Board.
§ 3063. Per capita or property tax, how levied.

3059. The Board of Supervisors of any county in which there is a port of entry or harbor, for which there is not otherwise provided health and quarantine regulations, may by an ordinance adopt the whole or any part of the provisions of Article III of this Chapter, appoint a Board of Health, or Health Officer, locate quarantine grounds when necessary, and provide for the enforcement of health and quarantine regulations.

Local adaptation of health and quarantine regulations—see § 4046, subd. 20.

3060. In like manner the Board of Supervisors of any county in which there is an unincorporated city or town, for which there is not otherwise provided a Board of Health or health regulations in time of epidemics, or the existence of contagious or infectious diseases, may by an ordinance adopt for such city or town, in whole or in part, the provisions of Article IV of this Chapter, for some definite period of time; and appoint therefor a Board of Health.

3061. It shall be the duty of the Board of Trustees, Council, or other corresponding Board, of every incorporated town and city of this State, to establish, by ordinance, a Board of Health for such town or city, to consist of five persons, one at least of whom shall be a practicing physician and a graduate of some reputable school of medicine, and one, if practicable, a civil engineer. The members of the Board shall hold their offices at the pleasure of the appointing power. Every local Board of Health established in this State must:

First—Supervise all matters pertaining to the sanitary condition of their town or city, and make such rules and regulations relative thereto as are necessary and proper, and not contrary to law.

Second—Report to the Secretary of the State Board of Health, at Sacramento, at such times as the State Board of Health may require:

a. The sanitary condition of their locality.

ıe number of deaths, with the cause of each, as near be ascertained, within their jurisdiction, during the ıg month.

ıe presence of epidemic or other dangerous, conta- : infectious disease, and such other matters, within owledge or jurisdiction, as the State Board may re-

Trustees, Council, or other legislative Board, by r name known, of any incorporated city or town of e may, by ordinance, adopt any portion of Article III)f this Chapter, or either of them, for some definite f time, as may seem proper for the regulation of sani- ters within their town or city. [In effect March 19,

t shall not extend to any incorporated city or town, or city and or which health regulations and [are?] provided by special

daptation of health laws—see § 4046, subd. 20, § 4408, subd.

ı inapplicable—to incorporated city, town, etc., for which gulations provided by special statute, see § 2 of amendatory ıts. 1878, p. 59.

In the place of appointing a Board of Health, the Supervisors or the city or town authorities may ap- Health Officer, with all the duties and powers of the Health and Health Officer, as specified in the two g articles.

All necessary expenses of enforcing this article are ıgainst the counties, cities, or towns, respectively, for ıent of which the county, city, or town, may levy a a tax of not exceeding three dollars, or a property tax xceeding one-fourth of one per cent. yearly until the)aid.

CHAPTER III.

Registry of Births, Marriages, and Deaths.

§ 3074. Registry of marriages.
§ 3075. Registry of births.
§ 3076. Registry of deaths.
§ 3077. Reports to Recorder.
§ 3078. Same.
§ 3079. Duties of Recorder.
§ 3080. Report to Secretary of State Board of Health.
§ 3081. Fees.
§ 3082. Penalties.
§ 3083. Printing and distribution of forms of register.

3074. All persons who perform the marriage ceremony must keep a registry of the time of each marriage so celebrated, the residence, the names in full, the place of birth, the age of each party, and whether either party has ever been before married. [In effect March 16, 1878.]

3075. All physicians and professional midwives must keep a registry of the time of each birth at which they assist professionally, the sex, race, and color of the child, and the names and residence of the parents.

3076. Physicians, who attend deceased persons in their last sickness; clergymen, who officiate at a funeral; Coroners, who hold inquests; sextons and undertakers, who bury deceased persons; must each keep a registry of the name, age, residence, and time of death of such person. [Approved March 30; in effect July 6, 1874.]

3077. All persons registering marriages, births, or deaths, must quarterly file with the County Recorder a certified copy of their register. All such certificates must specify, as near as may be ascertained, the name in full, age, occupation, term of residence in the city or county, birth-place, condition, whether single or married, widow or widower, sex, race, color, last place of residence, and cause of death of all decedents. [In effect March 16, 1878.]

3078. If at any birth no physician or midwife attends, the parents must make the report.

3079. The Recorder must keep separate registers, to be known as the "Register of Marriages," the "Register of

Births," and the "Register of Deaths," in which the marriages, births, and deaths certified to him must be numbered in the order in which they are reported to him. There must be stated in each register, in separate columns, properly headed, the various facts contained in the certificates, and the name and official or clerical position of the person making the report. The Recorder must carefully examine each report, and register the same marriage, birth, or death but once, although it may be reported by different persons. [In effect March 16, 1878.]

3080. The County Recorder must every three months transmit to the Secretary of the State Board of Health, at Sacramento City, a certified abstract of the registers of births, marriages, and deaths, prepared in the manner prescribed in the instructions of the Secretary, and upon blanks to be furnished by him for that purpose.

3081. County Recorders, in those counties where their compensation is by fees, shall be allowed by the Board of Supervisors a fee of not exceeding ten cents for each name reported, to be paid out of the General Fund of the county; and in those counties where their compensation is by a fixed salary the duties in this Chapter provided shall be performed without compensation other than such salary. [In effect March 16, 1878.]

3082. Any person on whom a duty is imposed by this Chapter who fails, neglects, or refuses to perform the same as herein required, is liable to a penalty of fifty dollars, to be recovered by the District Attorney of the proper county for the use of the General Fund of such county.

3083. The Secretary of the State Board of Health must prepare blank forms of said registers for the State Printer, who must print as many copies as the said Secretary shall direct, and deliver the same to the Secretary of State, who shall forward the same, from time to time, and in such numbers as shall be directed by the Secretary first mentioned to the County Recorders of the several counties, who must carefully keep and distribute the same to the persons in the county who are required to keep the registers and make the reports provided in this Chapter. [In effect March 16, 1878.]

CHAPTER IV.

Dissection.

§ 3093. Physicians, etc., may obtain dead bodies.
§ 3094. Bodies required to be buried at public expense.
§ 3095. Physicians to give certificate from Medical Society.

3093. Any physician or surgeon of this State, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction.

Basis of section—Stats. 1870, p. 405.

Dissection—removal of body for, Penal Code, § 291.

Violating sepulture and the remains of the dead—Penal Code, §§ 290-297. Disinterring, exhuming, or removing of bodies without permit, prohibited by Stats. 1878, p. 1050.

3094. Any Sheriff, Coroner, Keeper of a County Poor-house, public Hospital, County Jail, or State Prison, or the Mayor or Board of Supervisors of the City of San Francisco, must surrender the dead bodies of such persons as are required to be buried at the public expense to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being always given to medical schools by law established in this State, for their use in the instruction of medical students. But if such deceased person during his last sickness requested to be buried, or if within twenty-four hours after his death some person claiming to be of kindred or a friend of the deceased requires the body to be buried, or if such deceased person was a stranger or traveler who suddenly died before making himself known, such dead body must be buried without dissection.

3095. Every physician or surgeon, before receiving a dead body, must give to the Board or officer surrendering the same to him a certificate from the Medical Society of the county in which he resides, or if there is none, from the Board of Supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond, with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose within this State only, and so as in no event to outrage the public feeling.

CHAPTER V.

Cemeteries and Sepulture.

§ 3105. Title to cemetery grounds.
§ 3106. What constitutes a cemetery.
§ 3107. Cemeteries, how laid out and dedicated.
§ 3108. Inhabitants of city, etc., to own cemetery.
§ 3109. Public cemeteries, under whose control.
§ 3110. Regulations, sextons, etc.
§ 3111. Register must be kept.

3105. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village, and used by the inhabitants thereof continuously, without interruption, as a burial ground for five years, is vested in the inhabitants of such city, town, or village, and the lands must not be used for any other purpose than a public cemetery.

Sepulture—and the remains of the dead, violating, see Penal Code, §§ 290-297. Interdiction of unauthorized exhumation, Stats. 1878, p. 1050

3106. Six or more human bodies being buried at one place constitutes the place a cemetery.

Basis of section—Stats. 1854, p. 20.

3107. Incorporated cities or towns, and for unincorporated towns or villages, the Supervisors of the county, may survey, lay out, and dedicate of the public lands situated in or near such city, town, or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the Recorder's office of the county in which the same is located.

3108. The inhabitants of any city, town, village, or neighborhood may by subscription or otherwise purchase or receive by gift or donation, lands not exceeding five acres to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated to use for burial purposes must thereafter be used for no other purpose.

3109. The public cemeteries of cities, towns, villages, or neighborhoods must be inclosed and laid off into lots, and the general management, conduct, and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots and keeping the same in order, is under the jurisdiction

and control of the cities and towns owning the same, if incorporated; if not, then under the jurisdiction and control of the Board of Supervisors of the county in which they are situated.

3110. The Board of Supervisors, City Trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons or other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary.

3111. The authority having control of a public cemetery must require a register of name, age, birth-place, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

CHAPTER VI.

Lost and Unclaimed Property.

ARTICLE I. LOST MONEY AND GOODS.
II. UNCLAIMED PROPERTY.

ARTICLE I.

LOST MONEY AND GOODS.

§ 3136. Duty of persons finding lost money, etc.
§ 3137. Appraisers, appointment and duty of.
§ 3138. List of appraisers. Finder to advertise.
§ 3139. Proceedings, if no owner appear within six months.
§ 3140. Finder to restore property. Owner may sue.
§ 3141. Finder failing to make discovery, penalty.
§ 3142. Proof, how made.

3136. If any person find any money, goods, things in action, or other personal property, or shall save any domestic animal from drowning or from starvation, when such property shall be of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation, further than a reasonable charge for saving and taking care thereof; but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some Justice of the Peace of the county, stating when and where he found or saved such property, particularly describing it; and if the property was saved, particularly stating from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld, or disposed of any part of such property. [Approved March 30; in effect, July 6, 1874.]

Finder—rights, duties and liabilities of, see Civil Code, §§ 1864-1872.

Wrecks and wrecked property—§§ 2403-2418.

Lost property—larceny of, see Penal Code, § 485.

Former provisions—as to water craft found adrift, and lost money and property, Stats. 1850, p. 156.

3137. The Justice must then summon three disinterested householders to appraise the same. The appraisers, or any two of them, must make two lists of the valuation and

description of such property, and sign and make oath to the same, and deliver one of the lists to the finder, and the other to the Justice of the Peace.

3138. The Justice must file such list, and the finder must transmit a copy of the same to the Recorder of the county, who must record the same in a book known as the "Estray and Lost Property Book," within fifteen days, and the finder must at once set up at the Court House door and four other public places in the township or city a copy of such valuation and description of property.

3139. If no owner appears and proves the property within six months, and the value thereof does not exceed twenty dollars, the same vests in the finder; but if the value exceed twenty dollars, the finder must, within thirty days after setting up the list mentioned in the preceding section, cause a copy of the description to be inserted in some newspaper printed in the county, if there be one, and if not, in some newspaper printed in the State, for three weeks; and if no owner prove the property within one year after such publication it vests in the finder.

3140. If, within one year, an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property, or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any Court having jurisdiction.

3141. If any person find any money, property, or other valuable thing, and fail to make discovery of the same as required by this article, he forfeits to the owner double the value thereof.

Failing to make discovery—is larceny, Penal Code, § 485.

3142. The proof required by this article must be made before the Clerk with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be is the owner, he must certify that fact under his hand and the seal of the County Court.

County Court—superseded by Superior Court (see Code Civ. Proc., §§ 63-79), pursuant to Const. Cal. 1879, art. 22, § 3.

ARTICLE II.

UNCLAIMED PROPERTY.

§ 3152. Carriers may retain goods until charges paid.
§ 3153. Property unclaimed within sixty days to be sold.
§ 3154. Proceeds unclaimed, where to go.
§ 3155. Carrier's responsibility ceases, when.
§ 3156. Property upon which advances are made may be sold.
§ 3157. Fees of officers.

3152. When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, inkeepers, or warehousemen, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, inkeeper, or warehouseman, may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

Carrier—delivery and storage by, Civil Code, §§ 2118-2121; relief from liability, Civil Code, §§ 2131, 2132; lien for freightage, Civil Code, § 2144.

3153. If no person calls for the property within sixty days from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, innkeeper, or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

3154. If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the County Treasury, subject to the order of the owner.

3155. After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care.

3156. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within sixty days from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein.

3157. The fees of officers under this chapter are the same allowed for similar services in other cases provided in this Code, to be paid by the taker up or finder, and recovered of the owner.

CHAPTER VII.

Marks and Brands.

ARTICLE I. MARKS AND BRANDS.
II. REGULATIONS RELATING TO MARKS AND BRANDS.
III. TRADE MARKS.

ARTICLE I.

MARKS AND BRANDS.

§ 3167. Owners of cattle to keep a mark, etc.
§ 3168. To record brands. Fees.
§ 3169. Recorders' duties respecting recorded marks, etc.
§ 3170. Marks and brands not lawful unless recorded.
§ 3171. Certain marks not allowed.
§ 3172. Branding animals, at what age.

3167. Owners of horses, mules, cattle, sheep, goats, or hogs running at large, must have a mark, brand, and counterbrand different from any one in use by any other person, so far as may be known.

General basis of article—Stats. 1851, p. 411.

Altering brands—is State Prison offense, Pena Code, § 357.

Marks and brands in Siskiyou County—Act concerning, continued in force by Code, see § 19, subd. 11, and note.

3168. Every owner must record with the Recorder of the county his mark, brand, and counterbrand by delivering to the Recorder his mark, cut upon a piece of leather, and his brand and counterbrand burnt upon it, which shall be kept in the Recorder's office. A certified copy thereof made by the Recorder, with the seal of his office attached thereto, is evidence on the trial of any action in a Court of competent jurisdiction as to the ownership of all animals legally marked or branded. The Recorder must enter in a book to be kept by him for that purpose a copy of the marks, brands, and counterbrands; but he must first be satisfied that such brand and counterbrand tendered to him for record is unlike any other mark, brand, or counterbrand in the county, and, as far as his knowledge extends, is different from any other in the State. For recording the mark, brand, and counterbrand the Recorder is entitled to demand and receive one dollar.

Basis of section—Stats. 1851, p. 411; 1861, p. 373.

3169. Every Recorder in this State must transmit to the Recorders of the adjoining counties a transcript of all the marks, brands, and counterbrands recorded in his office, to be filed by such Recorders in their offices, and reference thereto must be made in every case of application for the record of marks and brands.

3170. No mark, brand, or counterbrand is lawful unless recorded as provided in this article, nor shall any person use more than one mark or brand, unless he is the owner of more than one ranch or farm.

Basis of section—Stats. 1851, p. 412; 1857, p. 131.

3171. No person must use a mark by cutting off the ear or by cutting the ear on both sides to a point.

3172. Every person must mark or brand his horses and mules before they are eight months old, and cattle before they are twelve months old, on the hip or hinder part, and mark or brand his sheep, goats, and hogs, before they are six months old. On the trial of any action to recover the possession of any animal which is marked or branded, the mark or brand is prima facie evidence that the animal belongs to the owner of the mark or brand. When a dispute occurs in regard to a mark or brand, the person first recording the same is entitled thereto. [Approved March 30; in effect July 6, 1874.]

Basis of section—Stats. 1861, p. 373; 1866, p. 333.

Prima facie evidence—defined, Code Civ. Proc., § 1833.

ARTICLE II.

REGULATIONS RELATING TO MARKS AND BRANDS.

§ 3182. Regulations for selling cattle, etc.
§ 3183. Penalty for using more than one, or an unrecorded mark.
§ 3184. Fraudulently mismarking cattle.
§ 3185. Hides of slaughtered cattle to be kept.

3182. Persons selling cattle, horses, mules, jacks, or jennies, must counterbrand them on the shoulders, or give a written descriptive bill of sale.

Basis of section—Stats. 1861, p. 373.

Written descriptive bill of sale—insufficient to constitute delivery of possession, where cattle running at large, though branding iron also handed over, 23 Cal. 540.

3183. Any person who uses any mark, brand, or counterbrand other than the one recorded by him, except by the consent of the owner of such other mark, brand, or counterbrand, or uses more than one mark, brand, or counterbrand otherwise than is provided in Article I, or suffers his ward, child, apprentice, or servant to use any other than his own mark, brand, or counterbrand on those of the stock they run with, forfeits to any person suing therefor the stock so marked or branded with any other than the proper mark or brand recorded by him. This section does not extend to any stock which may descend to any ward, child, apprentice, or servant by the gift or devise of any person other than the guardian, parent, or master of such ward, child, apprentice, or servant; but the marks, brands, and counterbrands of such minors, apprentices, or servants must be recorded as other marks, brands, and counterbrands.

Basis of section—and next, Stats. 1851, p. 412.

3184. If any person has knowledge of any person, who, with the intent to defraud or willingly mismarks or misbrands any stock not his own, or kills any stock running at large having a proper owner, the person having such knowledge must, within ten days thereafter, give information thereof to some Justice of the Peace of the proper county.

3185. All persons slaughtering cattle must keep the hides, with the ears attached, for fifteen days; and all persons having such hides in their possession must exhibit the same for examination on demand being made by any person.

Basis of section—Stats. 1866, p. 333.

ARTICLE III.

TRADE MARKS.

§ 3196. "Trade marks" defined.
§ 3197. Exclusive use of trade mark, how secured.
§ 3198. Record of trade marks.
§ 3199. Assignments. Injunctions.

3196. The phrase "trade mark" as used in this chapter includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

Compare—Civil Code, § 991; Penal Code, § 353.

Trade mark—definition in criminal law, Penal Code, § 353; subject of ownership, Civil Code, § 655; what may be appropriated for, Civil Code, § 991; warrant of genuineness, Civil Code, § 1772.

Counterfeiting trade marks—and kindred offenses, Penal Code, §§ 350-354.

Nature and limitations—of trade mark: name of a hotel (What Cheer House) is trade mark, 21 Cal. 448. Device for washing powder not peculiar (under former statute), 35 Cal. 69. "Antiquarian Book Store" not protected, 39 Cal. 502. "Aromatic Schiedam Schnapps" not protected, 45 Cal. 468. Must designate origin or ownership, not name, nature, kind, quality, or character of the article, 35 Cal. 53; 45 Cal. 467. Name of manufacturer or seller of goods may be used as a trade mark, 45 Cal. 468.

Designation of goods as of a particular class or description—insufficient: denoting kind or quality not enough, 35 Cal. 53; 45 Cal. 467; nor designation of trade or occupation in connection with words indicating special variety of goods sold, 39 Cal. 501.

3197. Any person may secure the exclusive use of any such trade mark or name by filing with the Secretary of State his claim to the same and a copy or description of such trade mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner or agent of the owner of such trade mark or name.

Basis of section—and of next two, Stats. 1863, p. 155.

3198. The Secretary of State must keep for public examination a record of all trade-marks or names filed in his office, with the date when filed and name of claimant; and must at the time of filing collect from such claimant a fee of three dollars in gold coin, to be paid into the State Library Fund.

3199. Any person who has first adopted, recorded, and used a trade mark or name, whether within or beyond the limits of this State, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any Court of competent jurisdiction may restrain, by injunction, any use of trade marks or names in violation of this Chapter.

Ownership of trade mark—hotel sign, 21 Cal. 451; does not cover the "articles" manufactured or sold, or their names or description, 35 Cal. 53.

Property in a trade mark—right exists and is recognized at common law, and irrespective of territorial bounds, though may be restricted by statute, 29 Cal. 294. Under statute of 1863, 29 Cal. 296. Common law remedies for invasion of trade marks, 29 Cal. 298; only extend to distinguishing mark of origin or ownership, 35 Cal. 53.

Infringement of trade mark—what does not constitute, 35 Cal. 53. What constitutes piracy of a trade mark, 45 Cal. 468. Imitation of label, 45 Cal. 468. Measure of damages, 40 Cal. 593.

Injunction—restraining infringement, when remedy properly invoked, 21 Cal. 448.

CHAPTER VIII.

Weights and Measures.

§ 3209. The standard of weights and measures.
§ 3210. The unit of extension.
§ 3211. Division of the yard.
§ 3212. The rod, the mile, and the chain.
§ 3213. The acre.
§ 3214. The unit of weights.
§ 3215. Division of the pound.
§ 3216. Unit of liquid measures.
§ 3217. The barrel, the hogshead.
§ 3218. Unit of solid measure.
§ 3219. Division of the half bushel.
§ 3220. Division of capacity for commodities.
§ 3221. Heap measure.
§ 3222. Contracts construed accordingly.
§ 3223. Weights of bushels of various products.

3209. The standard weights and measures now in charge of the Secretary of State being the same that were furnished to this State by the Government of the United States, and consisting of one standard yard measure; one set of standard weights, comprising one troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five, and fifty pounds, respectively; one set of standard troy ounce weights, divided decimally from ten ounces to the one ten thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one half gallon, one quart, one pint, and one half pint measure; and one standard half bushel, containing one thousand and sevent-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as the standard, are the standards of weights and measures throughout the State.

Basis of section—Stats. 1861, p. 86.

Sealers of Weights and Measures—Penal Code, §§ 561-567.

False weights and measures—Penal Code, §§ 552-555.

3210. The standard yard is the unit or standard measure of length and surface from which all other measures of extension, whether lineal, superficial, or solid, are derived and ascertained.

3211. The yard is divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; for measures of cloths and other commodities commonly sold by

the yard, it may be divided into halves, quarters, eighths, and sixteenths.

3212. The rod, pole, or perch, contains five and a half yards, and the mile one thousand seven hundred and sixty yards; the chain for measuring land is twenty-two yards long, and divided into one hundred equal parts, called links.

3213. The acre for land measure must be measured horizontally, and contains ten square chains, and is equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

3214. The standard avordupois and troy weights are the units or standards of weight from which all other weights are derived and ascertained.

3215. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundred weight consists of one hundred avoirdupois pounds, and twenty hundred weight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound.

Basis of section—Stats. 1861, p. 86.

3216. The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained.

3217. The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

3218. The standard half bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained.

3219. The peck, half peck, quarter peck, quart, and pint measures for measuring commodities other than liquid are derived from the half bushel by successively dividing that measure by two.

3220. The measures of capacity for coal, ashes, marl, manure, Indian corn in the ear, fruit, and roots of every kind, and for all other commodities commonly sold by heap measure, are the half bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plane and even bottom, and must be of the following diameters from outside to outside: the bushel,

nineteen and a half inches; half bushel, fifteen and a half inches, and the peck, twelve and a third inches.

3221. All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure, by which the same are measured, to be the limit of the base of the cone, and such cone to be as high as the article will admit.

3222. Contracts made within this State for work to be done, or for anything to be sold or delivered by weight or measure, must be construed according to the foregoing standards.

Basis of section—and of next, Stats. 1861, p. 86.

3223. Whenever wheat, rye, Indian corn, barley, buckwheat, or oats, are sold by the bushel, and no special agreement as to the weight or measurement is made by the parties, the bushel consists of sixty pounds of wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of fifty pounds of barley, of forty pounds of buckwheat, and of thirty-two pounds of oats.

CHAPTER IX.

Labor and Material on Public Buildings.

§ 3233. Labor must be done by day's work.
§ 3234. Material must be furnished by contract.

3233. All work done upon the public buildings of this State must be done under the supervision of a Superintendent, or State officer or officers having charge of the work; and all labor employed on such buildings, whether skilled or unskilled, must be employed by the day, and no work upon any of such buildings must be done by contract.

Section seems to apply to State buildings only—not to county jail, 47 Cal. 488.

3234. All materials to be used on any of the public buildings must be furnished by contract, in accordance with the plans and specifications and proposals therefor.

Basis of section—Stats. 1870, p. 777.

Section inapplicable—to erection of county jail, 47 Cal. 488.

Erection of public buildings and structures by contract—plans, specifications and proposals, Stats. 1872, p. 925; but see later Act to regulate such contracts, in Stats. 1876, p. 427, and repealing clause of same.

CHAPTER X.

Hours of Labor.

§ 3244. Eight hours a day's work.
§ 3245. Same, on public works.

3244. Eight hours of labor constitute a day's work, unless it is otherwise expressly stipulated by the parties to a contract.

Basis of chapter—Stats. 1863, p. 63.

Requiring wards or apprentices to work more than eight hours—is misdemeanor, Penal Code, § 651.

3245. Eight hour's labor constitute a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, control, or by the authority of any officer of this State acting in his official capacity, or under the direction, control, or by the authority of any municipal corporation within this State, or of any officer thereof acting as such; and a stipulation to that effect must be made a part of all contracts to which the State or any municipal corporation therein is a party.

Eight hours' labor a legal day's work—on all public work, Const. Cal. 1879, art. 20, § 17.

CHAPTER XI.

Time.

§ 3255. Time, how computed.
§ 3256. Leap year.
§ 3257. The year and its parts.
§ 3258. The week.
§ 3259. The day.
§ 3260. "Day-time" and "night-time" defined.

3255. Time is computed according to the Gregorian or new style; and the first day of January in every year passed since seventeen hundred and fifty-two, or to come, must be reckoned as the first day of the year.

Computation of time—§ 12 and notes.
Time when statute takes effect—§ 323.

3256. The several years one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other future hundredth year, of which the year two thousand is the first, except only every fourth hundredth year, are not leap years, but common years of three hundred and sixty-five days; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the year two thousand, inclusive, and also every fourth year, except as above mentioned, which, by usage, in this State is considered a leap year, is a leap year consisting of three hundred and sixty-six days.

3257. The term "year" means a period of three hundred and sixty-five days; a half year, one hundred and eighty-two days; a quarter of a year, ninety-one days, and the added day of a leap year, and the day immediately preceding, if they occur in any such period, must be reckoned together as one day.

3258. A week consists of seven consecutive days.

3259. A day is the period of time between any midnight and the midnight following.

Fraction of day—regarded when important, § 12n.

3260. "Day-time" is the period of time between "sunrise" and "sunset," and "night-time" is the period of time between "sunset" and "sunrise."

CHAPTER XII.

Money of Account.

§ 3272. Money of account.
§ 3273. Limitation on preceding section.
§ 3274. Amount, how stated in judgments, etc.

3272. The money of account of this State is the dollar, cent, and mill. Public accounts and all proceedings in Courts must be kept and had in conformity to this regulation.

Basis of chapter—Stats. 1850, p. 459.

Specified kind of money or currency—judgment when action on contract or obligation payable in, Code Civ. Proc., § 667.

3273. The provisions of the preceding section do not vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars, or parts of dollars, in any suit thereupon.

3274. In judgments and executions the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions.

CHAPTER XIII.

Auctions.

ARTICLE I. AUCTIONEERS.
II. REGULATIONS RESPECTING SALES.
III. FRAUDS AND PENALTIES.

ARTICLE I.

AUCTIONEERS.

§ 3284. Who may become auctioneers, and how.
§ 3285. The bond, sureties, approval, and filing.
§ 3286. Government goods are exempt.
§ 3287. Original application, how classified.
§ 3288. Renewal of license.
§ 3289. Renewal, for how long; exceeding class by sales.
§ 3290. Not to transfer license.
§ 3291. Auctioneers ex officio.
§ 3292. Assistant, who may act and when.

3284. Any citizen of this State may become an auctioneer for the county in which he resides, and is authorized to sell real and personal property at public auction, on giving a bond in accordance with the provisions of this article for the faithful performance of his duties, and on the payment of the license therefor.

Basis of section—Stats. 1859, p. 352; effect of latter in superseding former Act, 19 Cal. 501.

Auctioneer—authority of Civil Code, §§ 2362, 2363; mistake of, as to quantity of goods sold, when too late to correct, 4 Cal. 64; illegally acting as, is misdemeanor, Penal Code, § 436.

Sale by auction—Civil Code, §§ 1792-1798; of delinquent stock, Civil Code, § 341 *et seq.*; of pledged property, Civil Code, § 3005; mock auctions, punishment and forfeiture of license for, Penal Code, § 535.

Bond and license—failure to comply with requirement of, auctioneer estopped to allege, 16 Cal. 532.

3285. The bond must be conditioned to be paid to the people of the State of California, with one or more sureties, in the sum of five thousand dollars, and approved by the Judge of the Superior Court of the county in which the auctioneer proposes to do business, and must be filed in the office of the County Clerk of the county. [In effect April 3, 1880.]

Section founded—before amdt. 1880 (which substituted Judge of Superior Court for County Judge) on Stats. 1859, p. 352.

3286. No auctioneers' license is required for the selling of any goods at public sale belonging to the United States, or to this State, or for the sale of property by virtue of any process issued by any State or Federal Court.

Basis of section—Stats. 1859, p. 354.

3287. Every original application for auctioneers' license must be accompanied with a verified statement of the amount of sales proposed to be made monthly, and the license charge must be for the first quarter classified thereby.

Carrying on business without a license—is misdemeanor, Penal Code, § 435.

Amount of license—for various classes of auctioneers, § 3376.

3288. Every auctioneer applying to the Tax Collector for a renewal of his license must accompany the application with a statement, under oath, setting forth that his average receipts per month on account of sales during the preceding quarter did not exceed the amount specified in the class of license for which he applies. The Tax Collector must provide blank forms of affidavit for that purpose, and administer the oath required to such applicants without charge.

Basis of section—see § 3286*a*.

3289. After the first quarter licenses may be issued for the class fixed for a term not exceeding one year, at the option of the auctioneer. No auctioneer must exceed the amount of sales of the class in which his license is fixed. For every violation of this section, in addition to the criminal penalty, the auctioneer forfeits two hundred and fifty dollars.

Basis of section—Stats. 1861, p. 446.

Penalties—recovery and disposition of, see § 3323.

3290. No auctioneer is permitted to transfer his license to any other person for any part of the time for which his license is issued; nor is any auctioneer permitted to use his license for the purpose of transacting an auction business in more than one store or specified place of business.

Basis of section—and next, see § 3286*a*.

More than one place—see § 3302.

3291. In any city or town where there is no auctioneer, the Sheriff or a Constable thereof is ex officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex officio auctioneer he is liable on his official bond.

3292. Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty

imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a copartner or clerk to hold such auction in his name and behalf, such employee to take and file with the Clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible. [In effect March 30, 1874.]

Amendment 1874—added last sentence to section.

ARTICLE II.

REGULATIONS RESPECTING SALES.

§ 3302. Auctioneers to designate places of business.
§ 3303. To sell at no other place.
§ 3304. Power of city authorities.
§ 3305. Book for live stock.
§ 3306. Book of sales.
§ 3307. Advertisement of auction sales in San Francisco.
§ 3308. Evening sales in San Francisco and Sacramento.
§ 3309. Commissions, and penalty of overcharge.
§ 3310. Quarterly report of sales.

3302. No auctioneer in any city of this State must have at one time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the Clerk of the county in which such city is situated a writing signed by him designating such place, and naming therein the partners, if any, engaged with him in business.

3303. No auctioneer must expose to sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have usually been sold in warehouses, or in the public streets, or on the wharves.

3304. The Common Council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient.

3305. Every auctioneer who sells any animal of the horse kind, or any mules, must keep a book, in which he must register the name of each and every person bringing or offering any horse or mule to be sold, and the name of the person purchasing such horse or mule, together with the date of such sale, and a description of each horse or mule sold, together with the marks and brands. The book is a public record, sub-

ject to the inspection of any person desiring to inspect the same.

Basis of section—and of next, Stats. 1859, pp. 354, 355.

3306. Each auctioneer must keep a book, in which he must enter all sales, showing the name of the owner of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book must at all times be open for the inspection of any person interested therein.

3307. Every auctioneer in the City of San Francisco must, under his own name, give previous notice in one or more of the public newspapers printed in that city of every auction sale made by him; and in case he is connected with any person or firm, his name must in all cases precede, separately and individually, the name of such person or the title of the firm.

3308. All sales of goods by public auction in the Cities of San Francisco and Sacramento must be made in the day-time, between sunrise and sunset, excepting:

1. Books, prints, or paintings;
2. Goods sold in the original package as imported, according to a printed catalogue, of which samples must have been opened and exposed to public inspection at least one day previous to the sale.

3309. No auctioneer must demand or receive a higher compensation for his services than a commission of one per cent on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, in addition to the criminal penalty, forfeits to the party aggrieved two hundred and fifty dollars, and must refund the excess of charge.

Compensation of auctioneer—agreed percentage payable, though purchaser refuse to take the realty sold, on account of defect in the title, 25 Cal. 77.

3310. Every auctioneer must quarterly make to the County Auditor a report, under oath, showing:

1. The aggregate amount of auction sales made by him for the preceding quarter, designating the months and the amount for each month;

2. The days of each month on which auction sales were made, and the character of property sold by him during each month;

3. The amount of all private sales made, and the day on which they were made;

4. A statement of any partner, clerk, or other employee connected with him in his business, and what sales, if any, have been conducted by them, and why; and

5. The particular place where his business is conducted.

Accounting by auctioneer—under former statute, held not sole basis of his liability, 16 Cal. 532.

False report—or neglect to make any report, penalty for, § 3322.

ARTICLE III.

FRAUDS AND PENALTIES.

§ 3322. Penalty for not reporting, or reporting falsely.
§ 3323. Penalties, how recovered, and for what.
§ 3324. Action on bond.

3322. For every false report made, and for every neglect to make the report required in the preceding article, the auctioneer thereby forfeits the sum of two hundred and fifty dollars, to be recovered on his bond.

Penal provisions—concerning auctions, see Penal Code, §§ 436, 535.

3323. The penalties imposed by the provisions of this chapter, not otherwise appropriated, must be prosecuted for by the District Attorney of the proper county, the moneys recovered to be paid to the County Treasurer for the use of the General Fund of the county.

3324. Any one aggrieved or damaged by any act of an auctioneer, in violation of or contrary to the provisions of this chapter, has an action against him and his bondsmen on his official bond therefor.

CHAPTER XIV.

Fires and Firemen.

§ 3335. Fire companies, how organized.
§ 3336. To elect officers and adopt by-laws.
§ 3337. Firemen, what exempt from.
§ 3338. Exempt certificate, by and to whom issued.
§ 3339. County Clerk may issue exempt certificates, when.
§ 3340. Seal of department, who to use and keep.
§ 3341. Record, and certificate of exemption.
§ 3342. Duties of Chief of Fire Department.
§ 3343. Chief to attend fires and preserve property.
§ 3344. Setting woods on fire.
§ 3345. Extinguishing fire in woods.

3335. Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in incorporated towns and villages are organized by filing, with the Recorder of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and Secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every six months. There shall not be allowed to any such cities, towns, or villages, more than one company for each one thousand inhabitants; but one company shall be allowed in any city, town, or village where the population is less than one thousand. There shall not be allowed to any engine company more than sixty-five certificate members, to any hook and ladder company more than sixty-five certificate members, to any hose company more than twenty-five certificate members. [Approved April 1, 1878.]

Last two sentences of section—added by amdt. 1878.

Rest of section—based on Stats. 1853, p. 59; 1854, p. 42.

Fire Department and Commissioners—in unincorporated towns and villages, Act providing for, Stats. 1881, p. 25.

3336. Every such fire company must choose or elect a Foreman, who is the presiding officer, and a Secretary and Treasurer, and may establish and adopt by-laws and regulations, and impose penalties, not exceeding five dollars or expulsion for each offense.

3337. The officers and members of unpaid fire companies regularly organized, and exempt firemen, are entitled to the

following privileges and exemptions, viz: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion, or insurrection. [Approved April 1, 1878.]

Exemption from taxes—added by amdt. 1878.

General basis of section—previously, see Stats. 1853, p. 60; 1854, p. 42; 1861, p. 585; 1862, p. 465; 1864, p. 256.

3338. Every fireman who has served five years in an organized fire company in this State is an "exempt fireman," and must receive from the Chief Engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the Chief of the Fire Department or the Foreman of the company to which he belongs; such certificates must be countersigned by the Secretary, and over the seal of the company, if one is provided. Either certificate entitles the holder to exemption from military and jury duty.

General basis of section—same as of § 3337 before amdt. of 1878.

False certificate of exemption—issuance is misdemeanor, Penal Code, § 649.

3339. In lieu of issuing certificates to exempt firemen by the Chief of the Fire Department, as provided in the last section, on the certificate of the Foreman and Secretary of any fire company, or the Chief of the Department, provision being made therefor in the by-laws of the company, "exempt certificates" may be issued by the Clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

Basis of section—Stats. 1862, p. 245.

3340. Every fire department regularly organized may adopt a department seal, having upon it the arms of the State, and the name of the particular fire department to which it belongs, which must be under the control of and for the use of the Secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the by-laws may provide. The Secretary of every department having a seal must take the constitutional oath of office and give such bond as the by-laws provide for the faithful performance of his duties.

Basis of section—and of next, Stats. 1864, p. 256.

3341. The Secretary of the Fire Department, or fire company, must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates

issued to obtain County Clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated. [Approved March 30; in effect July 6, 1874.]

Prima facie evidence—see Code Civ. Proc., § 1833.

3342. The Chief of every fire department must inquire into the cause of every fire occurring in the city or town of which he is the Chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation must be fixed and paid by the city or town authorities.

Basis of section—and of next, Stats. 1864, p. 299.

Extinguishment of fires—disobeying orders for, or obstructing efforts for, etc., is misdemeanor, Penal Code, § 385.

3343. Every Chief of a fire department must attend all fires with his badge of office conspicuously displayed; must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by the Police or County Judge.

Stopping spread of conflagration—by blowing up houses, municipal corporation not liable in damages for, 1 Cal. 355, 452; nor is its officer personally liable, 3 Cal. 69.

Property rescued from fires—punishment for concealing, Penal Code, § 500; involuntary deposit of, Civil Code, § 1815, subd. 2, § 1816.

3344. Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured.

Setting woods on fire—is misdemeanor, Penal Code, § 384; setting fire to forests on public lands, punishment for, Stats. 1872, p. 96.

3345. Whenever the woods are on fire, any Justice of the Peace, Constable, or Road Overseer of the township or district where the fire exists, may order as many of the inhabitants liable to road poll tax, residing in the vicinity, as may be deemed necessary, to repair to the place of the fire and assist in extinguishing or stopping it.

CHAPTER XV.

Licenses.

ARTICLE I. GENERAL PROVISIONS.
II. CLASSIFICATION AND TAXES.

ARTICLE I.

GENERAL PROVISIONS.

§ 3356. Licenses to be prepared and printed.
§ 3357. Auditor to number, sign, and deliver.
§ 3358. Auditor to keep license accounts.
§ 3359. When license to be procured.
§ 3360. Suit against delinquent; damages
§ 3361. Tax Collectors; duties.
§ 3362. Proof on trials.
§ 3363. Settlements, when made.
§ 3364. Fees for licenses.

3356. Each County Auditor must prepare and have printed blank licenses of all classes mentioned in this chapter, for terms of three, six, and twelve months, and for such shorter terms as are herein authorized to be issued, with a blank receipt attached for the signature of the Tax Collector when sold.

Basis of section—Stats. 1858, p. 176; 1861, p. 446.

License—Discrimination in, sustained, 49 Cal. 557. Foreign miners' license tax, former; constitutionality, application, etc., 1 Cal. 232; 3 Cal. 403; 6 Cal. 148; 14 Cal. 13; 19 Cal. 107, 492; 24 Cal. 562. Generally, see Desty's Const. Cal. 348, 349. Sample sellers', ordinance of San Francisco requiring, declared inoperative and void, 52 Cal. 610. Street car license, local ordinance requiring, sustained, 53 Cal. 480. Tax, license held not, in the revenue sense, 27 Cal. 607, but is such in larger jurisdictional sense, 51 Cal. 500-501.

3357. The County Auditor must affix his official seal to, number, and sign all licenses, and from time to time deliver them to the Tax Collector in such quantity as may be required, taking his receipt therefor, and charge him therewith, giving in the entry the numbers, classes, and amount thereof.

Basis of section—Stats. 1867, p. 447.

3358. The Auditor must keep in his office the stumps of all licenses by him delivered to the Tax Collector, and a ledger

in which he must keep the Collector's account for all licenses delivered to him, sold or returned unsold by him. A correct statement of the Collector's license account must be certified to the County Treasurer each month by the Auditor.

3359. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the Tax Collector of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city, or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinances or orders of such city or town.

Basis of section--and next three, Stats. 1861, p. 443.

San Francisco license law--Stats. 1872, p. 736 (Act to facilitate and increase the collection of licenses), held not repealed or abrogated by Codes, in 53 Cal. 571. Superseding Act, Stats. 1878, p. 442.

Aliens ineligible to become electors--no license to be granted to, Stats. 1880, p. 192 or 39.

Recent special Acts—Alameda County, Stats. 1878, p. 255; San Benito County, Stats. 1878, p. 272.

City license ordinance--when sustained, 12 Cal. 138; 49 Cal. 557.

3360. Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the Collector may direct suit in the name of the people of the State of California as plaintiff, to be brought for the recovery of the license tax; and in such case either the Collector or attorney may make the necessary affidavit for and a writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant, and when collected five dollars thereof must be paid to the Collector, and ten dollars to the attorney prosecuting the suit.

Carrying on business without a license--is misdemeanor, Penal Code, § 435.

3361. Each Tax Collector must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require each person to state, under

oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is President, Secretary, or managing agent, will do in the next succeeding three months; and thereupon, such person, agent, President, Secretary, or other officer must procure a license from the Tax Collector for the term desired, and the class for which such party is liable to pay; and in all cases where an underestimate has been made by the party applying, the party making such underestimate, or the company he represented, are required to pay for a license for the next quarter double the sum otherwise required.

3362. Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs.

3363. On the first Monday in each month the Collector must return to the Auditor all licenses, unsold, and be credited therewith, and must, with the Auditor, appear at the Treasurer's office and pay into the County Treasury, for the use of the County General Fund, all moneys collected for licenses sold during the preceding month, take the Treasurer's receipt therefor, and file duplicates thereof with the Auditor. The Auditor must credit the Collector, and charge the Treasurer therewith.

Basis of section—Stats. 1859, p. 353; 1861, p. 447.

Payment of license moneys into General Fund—provision applicable to San Francisco, 53 Cal. 572.

3364. For each license issued, the Collector must collect a fee of one dollar, which must be paid into the Salary Fund of the county, unless the Auditor and Collector are paid by fees instead of salaries, in which case the dollar must be equally divided between them; *provided*, that in the county of Sierra the fees so collected shall belong to the collector. [In effect March 24 1874.]

Proviso inserted—by Amdt. 1874.

ARTICLE II.

CLASSIFICATION AND TAXES.

§ 3376. Classification and license tax.
§ 3377. (This section is repealed.)
§ 3378. Bridge, ferry, wharf, chute, or pier license.
§ 3379. Brokers, trust companies, and others.
§ 3380. Different kinds of licenses.
1. Billiards;
2. Theatres, etc.;
3. Circus, etc.;
4. Pawnbroker;
5. Intelligence offices.
§ 3381. Retail liquor licenses.
§ 3382. Merchants' license.
§ 3383. Exception in using liquors.
§ 3384. Peddlers' and hawkers' license.
§ 3385. Animals kept for propagation to be licensed.
§ 3386. Certain exhibitions, etc., exempted.
§ 3387. Present incumbents must collect licenses.

3376. Auctioneers are divided into eight classes, and must obtain licenses from the Tax Collector as follows:

1. Those whose average monthly sales amount to one hundred thousand dollars and upwards constitute the first class, and must pay a license of four hundred dollars per quarter;

2. Those whose average monthly sales amount to seventy-five thousand dollars, and less than one hundred thousand dollars, constitute the second class, and must pay a license tax of three hundred dollars per quarter;

3. Those whose average monthly sales amount to fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay a license tax of two hundred dollars per quarter.

4. Those whose average monthly sales amount to thirty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay a license tax of one hundred and twenty-five dollars per quarter;

5. Those whose average monthly sales amount to twenty thousand dollars, and less than thirty thousand dollars, constitute the fifth class, and must pay a license tax of one hundred dollars per quarter;

6. Those whose average monthly sales amount to ten thousand dollars, and less than twenty thousand dollars, constitute the sixth class, and must pay a license tax of sixty dollars per quarter;

7. Those whose average monthly sales amount to twenty-five hundred and less than ten thousand dollars constitute the seventh class, and must pay a license tax of twenty-five dollars per quarter;

8. Those whose average monthly sales are less than twenty-five hundred dollars constitute the eighth class, and must pay a license tax of seven dollars and a half per quarter.

Basis of section—Stats, 1870, p. 306.
Auctions and auctioneers—§§ 3284-3324.

3377 of this Code, as adopted, was repealed by the Act of April 1, 1872.

3378. Licenses to take tolls on bridges, ferries, wharves, chutes, or piers are fixed annually by the Board of Supervisors. The licenses therein provided for are issued by the County Auditor, and must be obtained from the Tax Collector of the county.

Toll bridges and ferries—see §§ 2483-2895. Delinquent license tax, proceedings to collect, Stats. 1872, p. 539.
Wharves, chutes and piers—§§ 2906-2920.

3379. Persons engaged in banking, loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons; or in buying or selling State, county or city stocks, or other evidences of State, county, or city indebtedness; or stocks, or notes, bonds, or other evidences of indebtedness of incorporated companies; or in buying or selling gold dust, gold or silver bullion, or gold or silver coin, are divided into six classes, and must pay licenses as follows:

1. Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter and over, constitute the first class, and must pay a license of one hundred dollars per quarter;

2. Those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter, constitute the second class, and must pay a lisense of eighty dollars per quarter;

3. Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per quarter, constitute the third class, and must pay a license of forty dollars per quarter;

4. Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, constitute the fourth class, and must pay a license of twenty-five dollars per quarter;

5. These doing business in any amount under fifty thousand dollars, and over five thousand dollars per quarter, constitute the fifth class, and must pay a license of fifteen dollars per quarter;

6. Those doing business in any amount under five thousand dollars per quarter, constitute the sixth class, and must pay a license of three dollars per quarter.

3380. Licenses must be obtained for the purposes hereinafter named, for which the Tax Collector must require payment as follows:

First—From each proprietor of a billiard table not kept exclusively for family use, for each table five (5) dollars per quarter; and for a bowling alley, five (5) dollars per quarter for each alley; but no license must be granted for a term less than three months.

Two—Theaters are divided into two classes; those seating nine hundred and seventy-five or more, are of the first class; those seating less than nine hundred and seventy-five are of the second class; one seat is twenty-two inches. Licenses shall be granted to theaters and other places of amusement according to the following schedule:

If for less than one month—	If for one month and less than three months—	If for three months and less than one year—	If for one year.
1st class, $5 per day	$100 per month	$300 per quarter	$600
2d class, $5 per day	$75 per month	$200 per quarter	$400

Third—For each exhibition, for pay, for a caravan or menagerie, or any collection of animals, circus or other acrobatic performance, ten dollars; and for each show, for pay, of any figures, jugglers, necromancers, magicians, wire or rope dancing, or sleight of hand exhibition, five (5) dollars each day.

Four—From each pawnbroker, thirty (30) dollars per quarter.

Five—From each keeper of all intelligence offices, fifteen (15) dollars per quarter. [Approved March 30; in effect July 6, 1874.]

Original basis of section—Stats. 1861, p. 441.

SUBDIVISIONS 2 and 3. **Inapplicable to charitable entertainments**—§ 3386.

SUBDIVISION 5. **Intelligence offices**—construction of local license Act concerning, 20 Cal. 592.

3381. Every person who sells spirituous, malt, or fermented liquors or wine, in less quantities than one quart, must obtain a license from the Tax Collector as prescribed in this chapter, and make therefor the following payment:

1. Those making sales to the amount of ten thousand dollars or more as a monthly average, constitute the first class, and must pay forty dollars per month;

2. Those making sales to the amount of five thousand dollars, and not exceeding ten thousand dollars as a monthly average, constitute the second class, and must pay twenty dollars per month;

3. And those making sales of less than five thousand dollars, constitute the third class, and must pay five dollars per month.

Retail liquor licenses—Validity of local regulations: similar Oakland ordinance, sustained, 49 Cal. 557; San Francisco Act, if it were unconstitutional, would prevent issuance of license on any condition, Purdy v. Sinton, Aug. 17, 1880, 6 P. C. L. J. 159.

Legislation against intoxicating liquors—§ 2980n.

3382. Every person who, at a fixed place of business, sells any goods, wares, or merchandise, wines or distilled liquors, drugs or medicines, jewelry, or wares of precious metals, whether on commission or otherwise (except agricultural or vinicultural productions, or the productions of any stock, dairy, or poultry farm of this State, when sold by the producer thereof, and except such as are sold by auctioneers at public sale under license), and all persons who keep horses or carriages for hire (except such as are used in the transportation of goods), must obtain from the Tax Collector of the county in which the business is transacted, and for each branch of such business, license, and pay quarterly therefor an amount of money to be determined by the class in which such person is placed by the Tax Collector; such business to be classified and regulated by the amount of the average monthly sales made or hiring done, and at the rates following:

1. Those who are estimated to make average monthly sales or hiring to the amount of one hundred thousand dollars or more, constitute the first class, and must pay fifty dollars per month.

2. Of seventy-five thousand dollars, and less than one hundred thousand dollars, constitute the second class, and must pay thirty-seven dollars and fifty cents per month.

3. Of fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay twenty-five dollars per month.

4. Of forty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay twenty dollars per month.

5. Of thirty thousand dollars, and less than forty thousand dollars, constitute the fifth class, and must pay fifteen dollars per month.

6. Of twenty thousand dollars, and less than thirty thousand dollars, constitute the sixth class, and must pay ten dollars per month.

7. Of ten thousand dollars, and less than twenty thousand dollars, constitute the seventh class, and must pay seven dollars and fifty cents per month.

8. Of five thousand dollars, and less than ten thousand dollars, constitute the eighth class, and must pay five dollars per month.

9. Of two thousand five hundred dollars, and less than five thousand dollars, constitute the ninth class, and must pay three dollars per month.

10. Of all amounts over twelve hundred and fifty dollars, and under two thousand five hundred dollars per month, constitute the tenth class, and must pay one dollar and fifty cents per month.

11. Of all amounts less than twelve hundred and fifty dollars per month, constitute the eleventh class, and must pay one dollar per month. [In effect March 10, 1874.]

Basis of section—Stats. 1861, p. 444.

Wines or distilled liquors—application of provision, § 3383.

3383. The sale of liquors and wines by persons licensed under the preceding section must not be in less quantity than one quart measure. No license must be required of physicians, surgeons, apothecaries, or chemists, for any wines or spirituous liquors they may use in the preparation of medicines.

Basis of section—Stats. 1863, p. 122.

3384. Every traveling merchant, hawker, or peddler, who carries a pack and vends goods, wares, or merchandise of any kind other than the manufactures or productions of this State, must pay for a license five dollars per month; and every such traveling merchant, hawker, or peddler, who uses a wagon, or one or more animals, for the purpose of vending such goods, wares, or merchandise of any kind, must pay for a license fifteen dollars per month; and every traveling merchant, hawker, or peddler, who uses a trading boat or other water craft only, shall pay a merchant's license, according to the provisions and classifications of section three thousand three hundred and eighty-two of this Code. [In effect March 20, 1876.]

Section not contravened—by ordinance of city of Los Angeles, imposing a license tax upon peddlers, ex parte Ah Toy, November 18, 1880, 6 P. C. L. J. 613.

Sample sellers' license—Ordinance of San Francisco, requiring higher rates for sale, or soliciting same, of goods not in the city or on the way thereto, held unreasonable and declared inoperative, 52 Cal. 610.

3385. Every person who keeps a stallion, jack, or bull, and who permits the same to be used for the purpose of propagation for hire, must annually obtain a license therefor from the Tax Collector, and pay therefor as follows:

1. Horses that are hired for the purpose of propagation, by the season, at one hundred dollars or more, constitute the first class, and require a license of seventy-five dollars.
2. At seventy-five dollars, and less than one hundred dollars, constitute the second class, and require a license of sixty dollars.
3. At fifty dollars, and less than seventy-five dollars, constitute the third class, and require a license of forty dollars.
4. At thirty dollars, and less than fifty dollars, constitute the fourth class, and require a license of twenty-five dollars.
5. At fifteen dollars, and less than thirty dollars, constitute the fifth class, and require a license of fifteen dollars.
6. All at less than fifteen dollars, constitute the sixth class, and require a license of ten dollars.
7. For each jack, ten dollars.
8. For each bull, ten dollars.

A license so obtained from the Tax Collector, under the provisions of this Act, shall entitle the holder thereof [to] the right to go into any county of this State for the purposes of propagation, without further license or expense. [In effect March 7, 1876.]

3386. The provisions of Subdivisions 2 and 3, of Section 3380, do not apply to exhibitions or entertainments given for the benefit of churches, schools, or other charitable entertainments, by any amateur dramatic association or literary society of the town or district in which such exhibition or entertainment is given.

3387. In every county in this State where any officer other than the Tax Collector is charged with the collection of license taxes, such officer must, until after the expiration of the term of the present incumbent, discharge the duties cast upon the Tax Collector under the provisions of Articles I and II of this Chapter.

TITLE VIII.

Property of the State.

CHAPTER. I. THE PUBLIC LANDS.
II. THE YOSEMITE VALLEY AND MARIPOSA BIG TREE GROVE.
III. THE STATE BURYING GROUND.

CHAPTER I.

The Public Lands.

ARTICLE I. GENERAL PROVISIONS RESPECTING THE PUBLIC LANDS.
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III. SCHOOL LANDS.
IV. PAYMENTS, CERTIFICATES OF PURCHASE, AND PATENTS.
V. SELECTION AND SALE OF UNIVERSITY LANDS.
VI. PROCEEDINGS AGAINST DELINQUENT PURCHASERS.
VII. MISCELLANEOUS PROVISIONS RELATING TO PUBLIC LANDS.

ARTICLE I.

GENERAL PROVISIONS RESPECTING THE PUBLIC LANDS.

§ 3395. Register to keep certain accounts and records.
§ 3396. Must keep plats, and note locations thereon.
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§ 3400. Qualification and residence of Agent. (Repealed.)
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§ 3402. Compensation. (Repealed.)
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§ 3404. Purchasers of lands must pay expenses, etc. (Repealed.)

§ 3405. Surveyor General to keep certain records.
§ 3406. Duty of Surveyor General on application for purchase.
§ 3407. Same.
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§ 3409. Statement as to condition of school sections.
§ 3410. Registers and Receivers, how compensated for services.
§ 3411. Surveyor General to represent State in contests.
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§ 3415. Same.
§ 3416. Effect of judgment.
§ 3417. Limitations.
§ 3418. Duty upon application for survey. (Repealed.)
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§ 3420. Upon refusal of County Surveyor. (Repealed.)
§ 3421. Surveys, how made. (Repealed.)
§ 3422. County Treasurer to report to Register.
§ 3423. Duty of Register on receipt of report.
§ 3424. Quarterly reports of the County Treasurers.
§ 3425. Treasurers to pay over moneys received.
§ 3426. Moneys to be retained by County Treasurers.
§ 3427. Interest, how computed and when payable.
§ 3428. Compensation of County Treasurer and Auditor.
§ 3429. Instructions and forms.

3395. The Register of the State Land Office must keep separate accounts and records in relation to each class of lands to which the State is entitled, which must show:

1. The number of the survey or location, and the date of the approval;

2. The name of the locator, the description of the lands by legal subdivisions, the price per acre at which they are sold, the amount paid, the date of payment, the number and date of the certificate of purchase;

3. The date of the patent, when it has been issued.

Register of the State Land office—Surveyor General is ex officio, §§ 350, 497. Deputy, same, §§ 350, 497. Clerks, § 343. Duties, referred to as being prescribed in this portion of Code, § 498. Salary of Clerks, § 500. Fees, § 501. Bond, § 502 and note.

State lands—generally, see § 3429n.

3396. He must also keep plats of such lands, upon which all approved locations and surveys must be designated by their numbers.

3397. When certificates of purchase or patents are issued, the fact must be noted on the plats.

Basis of section—Stats. 1868, p. 507.

Payments, certificates of purchase and patents—§§ 3512-3523.

3398. The Surveyor General is the general agent of the State for the location in the United States Land Offices of the unsold portion of five hundred thousand acres of land granted to the State for school purposes, and the sixteenth and thirty-

sixth sections granted for the use of public schools, and lands in lieu thereof.

School lands—§§ 3494-3503.

3399 to 3404. Section number three thousand three hundred and ninety-nine, three thousand four hundred, three thousand four hundred and one, three thousand four hundred and two, three thousand four hundred and three, and three thousand four hundred and four are hereby repealed. [In effect January 19, 1874.]

3405. The Surveyor General must provide the necessary record book, and cause all lists or patents for lands from the United States to be recorded therein.

3406. The Surveyor General must, whenever application is made to him for any portion of the lands mentioned in Section 3398, communicate with the United States Land Office, and ask that the lands described in the application be accepted in part satisfaction of the grant under which it is sought to be located.

Accepted in part satisfaction of grant—sufficient consent, 39 Cal. 344; must be done before suit commenced touching right to purchase lien lands, 44 Cal. 352; rights of applicants in abeyance until, 52 Cal. 535.

3407. When the acceptance of the Register of the United States Land Office is obtained, he must give to the party applying a copy of his approval.

Acceptance—see Accepted in part satisfaction of grant, § 3406.

Approval—certificate by Register manifests consent of the United States to entry of lands by State, 42 Cal. 607; until land certified over to State, as required by previous statute, selection was not confirmed and title did not pass to State, 40 Cal. 73; 44 Cal. 382; 49 Cal. 217. Confirmation of State selections of unsurveyed lands, 38 Cal. 30.

3408. All of section three thousand four hundred and eight of the Political Code is hereby repealed. [In effect April 3, 1876.]

Repealed section—dispensed with U. S. Register's approval of applications for portions of thirty-sixth sections. Violation of requirement, that township or other lines should have been established, had to be alleged (under similar statute) by contesting applicant, 52 Cal. 107. Essential that applicant should make affidavit required, 52 Cal. 93-94, 107.

3409. The Surveyor General must, after the survey of any township by the United States Surveyor General, obtain from the United States Land Office a statement, showing whether or not the sixteenth and thirty-sixth sections therein belong to the State.

Sixteenth and thirty-sixth sections—title in State until surveyed, 45 Cal. 656; and not divested, when, 48 Cal, 601.

3410. The Registers and Receivers of the United States Land Offices must present their accounts for services rendered the State to the Surveyor General, who, if he finds the same correct, according to fees allowed Registers and Receivers by Act of Congress, or by the Department of the Interior, must certify the same to the State Board of Examiners, who must audit and allow such accounts, and they must be paid out of the General Fund.

Basis of section—Stats. 1870, p. 14.
State Board of Examiners—§§ 654-683.

3411. The Surveyor General must represent the State in all contests between it and the United States in relation to public lands.

Land contests between this State and the United States—when national Government not concluded by notice, 47 Cal. 182; priority of proceedings gives preference, 34 Cal. 511; 48 Cal. 27.

3412. When he desires to take testimony under the provisions of the Act of Congress to quiet land titles in California, passed July, eighteen hundred and sixty-six, he must request the United States Surveyor General to fix a place convenient of access by the witnesses, and the time for taking such testimony.

3413. He may require the Attorney General to attend and represent the State at the taking of such testimony; and the traveling expenses of each are a charge against the State. All claims for traveling expenses must be audited and allowed by the Board of Examiners, and paid out of the General Fund. But not more than fifteen hundred dollars must be allowed in any one year for such expenses.

Board of Examiners—§§ 654-683.

3414. When a contest arises concerning the approval of a survey or location before the Surveyor General, or concerning a certificate of purchase or other evidence of title before the Register, the officer before whom the contest is made may, when the question involved is as to the survey, or one purely of fact, or whether the land applied for is a part of the swamp or overflowed lands of the State, or whether it is included within a confirmed grant, the lines of which have been run by authority of law, proceed to hear and determine the same; but when, in the judgment of the officer, a question of law is involved, or when either party demands a trial in the Courts of the State, he must make an order referring the contest to the District Court of the county in which the land is situated, and must enter such order in a record book in his office.

Contest before Surveyor General—none as to land for which pat-

ent has been issued, 52 Cal. 379; absence of, prevents jurisdiction of Court from vesting, when, 50 Cal. 82; contestant need not seek to purchase, 25 Cal. 26.

Contest over certificate of purchase—improperly issued, may be raised in the office of the Register, who may refer it to the Court for trial, 51 Cal. 132.

Question of law involved—requires reference to Courts, 43 Cal. 57; is one of original grounds for jurisdiction of Court, 51 Cal. 7.

Demand for trial—initiation of contest by, is ground for jurisdiction of Court, 51 Cal. 7.

Order referring the contest—provision and section cited, 54 Cal. 632; must be shown in proof, Lane v. Pferdner, October 6, 1880, 6 P. C. L. J. 467; alone gives jurisdiction, 55 Cal. 42.

District Court—superseded by Superior Court under Const. Cal. 1879, art. 22, § 3.

3415. After such order is made either party may bring an action in the Superior Court of the county in which the land in question is situated, to determine the conflict, and the production of a certified copy of the entry, made by either the Surveyor General or the Register, gives the Court full and complete jurisdiction to hear and determine the action. [In effect April 28, 1880.]

Action in State Court—to annul certificate of purchase: if holder of certificate is known, service of summons must be personal and not by publication, 45 Cal. 639. Pleadings in, 49 Cal. 356.

Production of certified copy of entry—Order of reference must be shown in proof, Lane v. Pferdner, October 6, 1880, 6 P. C. L. J. 467.

Jurisdiction of Court—to decide question of State's title, when District Court had, 48 Cal. 603. None was possessed by District Courts to determine contest as to right to purchase swamp and overflowed land, or as to approval of a survey, etc., unless the contest arose in the office of the Surveyor General, 50 Cal. 82: nor (under Stat. 1868) to try right of a party to purchase State lands, unless contest initiated in Register's office by demand for trial, or question of law involved, and Register so certifies, 51 Cal. 7. Existed in District Court, when certificate of purchase improperly issued, and contest certified by Register, 51 Cal. 132. None in District Courts except where contests had arisen in the office of the Surveyor General or Register, 52 Cal. 128. Derived only through reference, 55 Cal. 42: and must be expressly conferred by statute, 44 Cal. 347.

3416. Upon filing with the Surveyor General or Register, as the case may be, a copy of the final judgment of the Court, that officer must approve the survey or location, or issue the certificate of purchase or other evidence of title in accordance with such judgment.

Judgment of the Court—character and limits of, 51 Cal. 536; copy must be filed, before patent issues, 51 Cal. 325.

Must approve the survey or location—on this provision as well as §§ 3414 and 3415; see Langenour v. Shanklin, February 17, 1881, 7 P. C. L. J. 140.

Other evidence of title—no power to issue patent until Court proceedings finished, 51 Cal. 325.

3417. Unless the party contestant commences his action within sixty days after the order of reference is made, his rights in the premises and under his application cease.

3418 to **3421.** Sections three thousand four hundred and eighteen, three thousand four hundred and nineteen, three thousand four hundred and twenty, and three thousand four hundred and twenty-one of the Political Code are hereby repealed. [In effect March 28, 1874.]

Repealed section—Provisions of similar statute of 1852, for the survey of public land by County Surveyors, applied to such land only as had not been surveyed by the United States, 42 Cal. 609. County Surveyor not permitted to purchase lands to which his duties related, 48 Cal. 196; 52 Cal. 376.

Repealed section—required approval by Surveyor General of survey made by County Surveyor, and recording of same by latter. Lands which did not pass to State by virtue of Act to quiet land titles in California, unless approval before passage of Act, see 51 Cal. 12. Payment within specified time from date of approval (compare § 3512), under Statute 1863; provision mandatory, 51 Cal. 6.

3422. Upon the first day of every month the County Treasurer must make a report to the Register of all moneys received for land during the preceding month, showing the number of the location or survey, the name of the purchaser, and the amount paid since the date of his last report, whether as principal or interest, which amounts must be entered in the columns belonging to the particular class of land upon which each payment has been made. The payment of the fee for the certificate of purchase must also be entered in the proper column, and the Treasurer must then send the report to the Auditor, who must compare the items with the account of the Treasurer; and if the same agrees with his entries, countersign the report and return it to the Treasurer.

Payments—Certificates of Purchase, and Patents, see §§ 3512-3523.

3423. These reports must be forwarded to the Register at once, and upon receipt thereof the Register must enter the payment so reported to the credit of the purchaser in the books of his office. He must notify the County Treasurer of the receipt of his report, and if it is not correct, return it for correction.

3424. At the end of each quarter the County Treasurer must report to the Controller of State the sum which has been received during the quarter upon each class of land; which report must be referred to the Register for examination and comparison with the books of his office.

3425. When the Register certifies to the correctness of the report it must be returned to the Controller, who must there-

upon make his settlement with the County Treasurer, who must pay over to the Treasurer of State all moneys, Controller's warrants, or other evidences of State indebtedness which he may have received in payment for such lands, except as provided in the next section.

3426. The County Treasurer must retain all moneys arising from the sale of swamp and overflowed lands, and place the same to the credit of a Fund known as the "Swamp Land Fund" of the county.

Swamp and Overflowed Lands—Salt Marsh and Tide Lands, §§ 3440-3488.

3427. The County Treasurer must compute interest on all sales from the date of the approval of the survey, or the date of the certificate of location, to the first of January following such date; or if for lands already purchased, then up to the first of January following the day upon which the interest falls due; after which time all payments of principal or interest fall due on the first day of January.

3428. The County Treasurer is entitled to retain one per cent. of all moneys paid him for lands under the provisions of this article, and the Auditor is entitled to one per cent. on amounts certified to by him as provided in Section 3492, which he must receive from the Treasurer, and his receipt therefor is a voucher for the Controller of State in his settlement with such Treasurer. When the Auditor or Treasurer receives a salary as Auditor or Treasurer, the percentage must be paid into the County Treasury.

3429. The Surveyor General and Register must issue all instructions, and prepare and have printed all blank forms necessary to carry into operation the provisions of this chapter.

Provisions of this chapter—see succeeding notes.

Public Lands—Federal Government can alone grant or survey them, 24 Cal. 245; 27 Cal. 216; 48 Cal. 26. State selection of lands granted by Government before latter has surveyed them, is invalid, 49 Cal. 213. Effect of Act to quiet land titles in California on, 47 Cal. 439. Officers supervising, powers, and review of their acts, 47 Cal. 461, 561. Railroad land grants, 49 Cal. 438, 446, 449.

State Lands—Generally. Act of 1863, for management and sale of, repealing effect, 39 Cal. 681; affidavits in application for purchase of, required by, 51 Cal. 128. Act of 1868, for sale of, does not authorize sale of beach of ocean below high tide, 46 Cal. 107; cost of publishing summons under, 46 Cal. 189. Actual settlers, to be granted only to, Const. Cal. 1879, art. 17, § 3; provision held to operate on applications made before section took effect, 55 Cal. 102; but held not retroactive in Langenour v. Shanklin, February 17, 1881. Construction of grant of, to city, 13 Cal. 451. Equitable title to, 52 Cal. 405. Location of, 16 Cal. 296; 33 Cal. 256. Selection of, when void, 50 Cal. 16. Two classes of, 26 Cal. 353. When acquired under Act of Congress, 27 Cal. 322.

Application—must follow statute, 46 Cal. 389.

Legalizing applications for State lands—History of the curative legislation, Rowell v. Perkins, October 29, 1880, 6 P. C. L. J. 501. Act for relief of purchasers of State lands, Stats. 1872, p. 587, legalizing application as to payment, was amended by Stats. 1878, p. 914, which amendment did not, however, affect any vested right; see Rowell v. Perkins, *supra*. Act in Stats. 1870, p. 352, legalizing application as to affidavit, was held modified by the Act of 1872, just referred to, in Rowell v. Perkins, *supra;* held not to supply defects, but to legalize the applications with their defects, 47 Cal. 236; construed to apply only to lands offered for sale at date of application, 49 Cal. 5; but had the effect to validate the defective applications covered thereby, 53 Cal. 90. Act in Stats. 1872, p. 622, to legalize previous applications and confirm the titles of the purchasers thereunder, had a retroactive operation, 52 Cal. 373; but did not operate on future applications, 55 Cal. 102.

ARTICLE II.

SWAMP AND OVERFLOWED, SALT MARSH, AND TIDE LANDS.

§ 3440. Swamp lands, etc.; price and manner of payment.
§ 3441. Surveys not to be approved until land segregated.
§ 3442. Settlers preferred purchasers for six months.
§ 3443. Affidavit for purchase of swamp land.
§ 3444. If made by female, what must show.
§ 3445. Land segregated, but not sectionized.
§ 3446. Formation of reclamation districts, petition for.
§ 3447. Verification and publication.
§ 3448. District situated partly in different counties.
§ 3449. Proceedings on approval of petition.
§ 3450. Petition, where to be recorded.
§ 3451. Duty of Register on receipt of copy.
§ 3452. District by-laws and Trustees.
§ 3453. By-laws must be signed and recorded.
§ 3454. Powers of Trustees.
§ 3455. Board of Trustees to report plans, etc.
§ 3456. Commissioners to assess charges for reclamation, etc.
§ 3457. Warrants, presentation, etc.
§ 3458. District situated partly in different counties; charges, where paid.
§ 3459. Additional assessments.
§ 3460. Commissioners to make assessment lists.
§ 3461. Contents of lists.
§ 3462. Lists, where filed.
§ 3463. Lien acquired by filing lists.
§ 3464. Credit to be given to owner of land.
§ 3465. Payment, how made.
§ 3466. Delinquent assessments, how collected.
§ 3467. Work of reclamation to be done under direction of Trustees.
§ 3468. Accounts to be kept open to inspection.
§ 3469. Subsequent purchasers governed by by-laws.
§ 3470. Rights of such purchasers, how secured.
§ 3471. Property may be condemned for reclamation purposes.
§ 3472. Owners may reclaim without intervention of Trustees.
§ 3473. Their powers and duties.
§ 3474. When works of reclamation are in progress, interest to cease.
§ 3475. Power of Supervisors to let contracts, etc.
§ 3476. Certificate of completion of work, etc.
§ 3477. Credit when given, statement forwarded and moneys paid over.
§ 3478. Old districts may reorganize under this chapter.

§ 3479. Trustees may compromise indebtedness of, and levy tax to pay the same.
§ 3480. Bonds and warrants redeemed may be used by Trustees in purchase of land in district.
§ 3481. Unreclaimed lands may be set off in separate district.
§ 3482. Liability of such district for original indebtedness.
§ 3483. Districts, how designated.
§ 3484. In Sacramento, Supervisors may employ clerk.
§ 3485. Payment on lands sold for five years or less, when to be made.
§ 3486. Occupants of land on banks of stream liable for damages, when.
§ 3487. Proof in mitigation of damages,
§ 3488. Certain lands excepted from the provisions of this chapter.
§ 3489. Reorganizing and consolidating swamp districts.
§ 3490. Injuries to levees.
§ 3491. Election of Trustees.

3440. The swamp and overflowed, salt marsh, and tide lands belonging to the State must be sold at the rate of one dollar ($1 00) per acre, in gold coin, payable, twenty per cent. of the principal within fifty days from the date of the approval of the survey by the Surveyor General, and the balance, bearing interest at the rate of seven per cent per annum, payable in advance, is due and payable one year after the passage of any Act of the Legislature requiring such payment, or before, if desired by the purchasers. Bonds or warrants of districts having an outstanding indebtedness are receivable in payment for lands in such districts at par. [Approved April 15, 1880; in effect January 1, 1881.]

Swamp and overflowed lands — Arkansas Act, conferring on States, 9 Cal. 556; 26 Cal. 336; and see Title of State. Description in State Patent, 50 Cal. 333. Dismissal of contest, neutral judgment equivalent to, 47 Cal. 412. Drainage of agricultural lands and these, Act providing system for, Stats. 1881, p. 15. Evidence that lands are, 28 Cal. 602; 29 Cal. 317; 31 Cal. 461; 33 Cal. 542. Grant of, object of Congress in making, and obligations of State in receiving, 45 Cal. 344; and see Arkansas Act. Payments, effect of default in, 41 Cal. 557; 43 Cal. 569. Purchaser, vested rights of, 31 Cal. 177. Test of, is whether usually rendered by overflow unfit for successful (which does not mean profitable, 47 Cal. 436) cultivation of staple crops, 31 Cal. 461; 33 Cal. 547; 50 Cal. 144. Title of State to, 9 Cal. 322, 554; 23 Cal. 432; 26 Cal. 336; 27 Cal. 89; 29 Cal. 318; conflict with Federal title, oral testimony in, 28 Cal. 602.

Salt marsh lands—are portion of swamp lands of State, 26 Cal. 355; 32 Cal. 354; narrow channels threading (within the ebb and flow of the tide), covered by proviso in Act of 1858, 26 Cal. 355. Payment of installments for, 40 Cal. 173.

Tide lands—Description in application to purchase, 43 Cal. 56; 45 Cal. 219. High-water mark, see usual or ordinary high-water mark. Injunction to restrain sale of by State, requirements of application for, see 40 Cal. 33. Near cities having water front, withheld from grant or sale to private parties, Const. Cal. 1879, art. 15, § 3. Payments, effect of default in, 40 Cal. 181. School land warrants, not to be located on, 40 Cal. 33. Statute of Limitations as to, when will not run against the State, 40 Cal. 34. Term in legislation of the State, is applied to lands covered and uncovered by the ordinary tides, 30 Cal. 379; 32 Cal. 364 (see also portion of this note on usual, etc., high-water mark), and does not include lands permanently submerged; but in statutes for sale of swamp and overflowed lands has a different meaning, 40 Cal. 473, as in Act of 1861, where refers only to such tide lands as are subject to periodical over-

flow, but susceptible of reclamation, 26 Cal. 336. Title to, in California, 54 Cal. 457; right of State to lands under water, where the tide ebbs and flows, ceases on destruction of easement or right of navigation on which its sovereign control founded, as when land below high-water mark reclaimed, 5 Cal. 73. Usual or ordinary high-water mark, as applied to tide waters, means limit reached by neap or ordinary tides, 18 Cal. 11; 26 Cal. 354; 32 Cal. 366; land below high-water mark, over which the tide ebbs and flows, not vested under certificate of purchase as swamp and overflowed land, 40 Cal. 472; beach of ocean below high tide could not be sold as tide lands, under Act of 1868, 46 Cal. 107; land bounded by the sea shore extends only to the high-tide line, 37 Cal. 432.

Time prescribed for first payment—thirty days from approval of survey, required by Act of 1863, is mandatory, and if money received later, entry is void, 51 Cal. 3.

Survey—mode of making, 50 Cal. 86-89.

Interest—after foreclosure for non-payment of, purchasers may redeem, Stats. 1881, p. 66.

Seven per cent.—per annum is rate instead of ten, as before amdt. 1880.

3441. The Surveyor General of the State must not approve any application, nor must the Register issue evidence of title for swamp and overflowed land, until six months after the same had been segregated by authority of the United States. [In effect March 28, 1874.]

Before amendment 1874—"application" read "survey of," and last part read "authority of this State or the United States;" and section was based on Stats. 1870, p. 878.

Segregation as pre-requisite—47 Cal. 412. No valid selection before survey by General Government, 46 Cal. 243.

Compare enactment—given under § 3548.

3442. Settlers upon swamp and overflowed lands belonging to the State, who occupy the same for farming or grazing purposes, and whose occupation is evidenced by actual inclosure, or by ditches or monuments showing the actual extent thereof, are preferred purchasers for such lands for six months after segregation.

Basis of section—Stats. 1870, p. 878.

Settlers—absence of, or expiration of period of purchase, must be stated in affidavit of applicant, § 643.

Occupation of lands—(under Act in Stats. 1868, p. 514), defeated application, 51 Cal. 534.

Application after period of preference—under Act in Stats. 1870, p. 878, not prohibited, but sufficient if prior to any other valid application, 51 Cal. 534.

3443. Any person desiring to purchase swamp and overflowed, or tide lands, above low tide, must make an affidavit and file the same in the office of the Surveyor General of the State, that he is a citizen of the United States, or has filed his intention to become so; a resident of the State, of lawful age; that he desires to purchase lands (describing them) under the law providing for the sale of swamp and overflowed and tide lands; that he does not know of any valid claim to the same,

other than his own; and, if the land is swamp and overflowed, that he knows the land applied for and the exterior bounds thereof, and knows, of his own knowledge, that there are no settlers thereon; or, if there are, that the land has been segregated more than six months by authority of the United States, and that the land which he now owns (swamp and overflowed), together with that sought to be purchased, does not exceed six hundred and forty acres. [In effect March 28, 1874.]

Application—requisites and priority, 50 Cal. 83; confers rights which can be lost only by applicant's failure to pursue further steps prescribed by the statute, 43 Cal. 63.

Affidavit—must be made by applicant, 50 Cal. 80.

Resident—applicant must be, 52 Cal. 380.

Description of lands—must be intelligible, 45 Cal. 220; when sufficient, 43 Cal. 62.

No settlers thereon—otherwise, under Act of 1868, purchase not allowed, 51 Cal. 534.

Bona fide settlers—under homestead or pre-emption claims, protected, see Act in Stats. 1881, p. 73, amending Act in Stats. 1874, p. 327.

Or that land has been segregated, etc.—alternative form of statement improper, but facts must be stated directly and positively, 52 Cal. 158.

3444. If the applicant is a female, such affidavit must also show that she is entitled to purchase real estate in her own name.

3445. Any person desiring to purchase lands, as provided in section three thousand four hundred and forty-three of this Code, which have been segregated by authority of the United States, but which have not been sectionized by the same authority, must apply to the Surveyor of the county in which the land is situated, to have the land which he desires to purchase surveyed, and a certificate of such survey must be attached to the affidavit required for the purchase of lands, as provided in said section. All surveys required of County Surveyors by the provisions of this section, must conform, as nearly as practicable, to the system adopted by the United States for the survey of the public lands. [In effect March 28, 1874.]

Survey to conform to that of United States—lines of local survey should connect with those of Government survey, 50 Cal. 336.

3446. Whenever the holders of title or evidence of title representing one-half or more of any body of swamp and overflowed, salt marsh, or tide lands, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the Board of Supervisors of the county in which the lands or the greater part thereof are situated, at a regular meeting of the Board, a petition, setting forth that they propose to form

a district for the reclamation of the same, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed district, and in each tract, with the names (if known) of the owners thereof, and designating as unsold any lands not reduced to private ownership. [Approved March 30; in effect July 6, 1874.]

Reclamation of swamp lands—right of Legislature to provide for, fully discussed in 45 Cal. 344; held to apply to all the swamp and overflowed lands in the State, 47 Cal. 223. Act of 1868 for, applied to lands whose title is derived from a Mexican grant as well as to those acquired by the State under the Arkansas Act, 47 Cal. 222.

Petition—for formation of reclamation district cannot be attacked *aliunde*, for deficiency of signatures, 51 Cal. 406. For division of swamp land district formed prior to March 28, 1868, and for the formation of a new district, statements required in, 51 Cal. 592. Defective or informal, when too late to raise objection to, 47 Cal. 222.

Formation of Reclamation district—where district not originally formed under the Code (pursuant to this and succeeding sections), nor reorganized under § 3478, assessment made by it is void; see Reclamation District No. 3 v. Kennedy, February 7, 1881, 7 P. C. L. J. 89.

Reclamation district is a public corporation—see § 3452*n*.

3447. The petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or, if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of publication must be filed with such petition.

3448. When a district is situated partly in different counties, the Trustees must, after the petition has been granted, forward a copy thereof to the Clerk of the Board of Supervisors of each of the counties in which any portion of the district may lie; and the Board to which the same is forwarded must not allow another district to be formed within such district, unless with the consent of the Trustees thereof.

Boards of Supervisors of Yolo and Solano Counties—may approve any petition presented pursuant to §§ 3446 and 3447, whether lands form part of another district or not, see Stats. 1874, p. 602.

3449. If the Board of Supervisors find, on the hearing of the petition, that its statements are correct, they must make an order approving the same. If it be shown that any land has been improperly included in or excepted from the proposed district, they must re-form the district in such respects in their order. The order of approval must be indorsed on or attached to the petition, and be signed by the President and attested by the Clerk of the Board. [Approved March 30; in effect July 6, 1874.]

Review of proceedings of Board—by certiorari, estoppel on, and dismissal of writ, where objection to petition comes too late, 47 Cal. 222.

Appeals from orders of Board—forming, dividing or consolidating reclamation or swamp land districts, to Superior Court of county, pursuant to rules of such Court, Stats. 1880, p. 385 or 119.

3450. The petition must then be recorded by the County Recorder in a book kept for the purpose of recording papers relating to reclamations, and a certified copy thereof forwarded to the Register.

3451. The Register must thereupon forward to the County Treasurer a statement showing the names of purchasers of land in the district, who have paid in full therefor. [Approved March 30; in effect July 6, 1874.]

3452. After the approval of the petition, the petitioners, or a majority of them, may make by-laws for the management of the district, and must elect three persons owning land in the district to act as a Board of Trustees thereof, who shall keep their office in the district, or as near as practicable, for the transaction of all business pertaining to the reclamation of the district, and their books and papers shall be open to inspection by any one person interested, at all times. [Approved March 30; in effect July 6, 1874.]

Section cited—54 Cal. 537.

Reclamation district is a public corporation—51 Cal. 410; 53 Cal. 346; People v. Williams, February 7, 1881, 7 P. C. L. J. 120; and see 52 Cal. 184; also People v. Haggin, March 29, 1881, 7 P. C. L. J. 281.

By-law—of a swamp land district is superseded by an Act of the Legislature in conflict therewith, 51 Cal. 474.

Board of Trustees—Agents of, personally liable for injuries to land, Brownell v. Fisher, December 27, 1880, 6 P. C. L. J. 905. Liability on a contract for building a levee, when conditional, 49 Cal. 220. Powers of, §§ 3454, 3471. Election of, § 3491.

3453. The by-laws thus adopted must be signed by the holders of certificates of purchase, or patents, representing at least one-half of the land so to be reclaimed or benefited, and be recorded by the County Recorder in the same book and immediately following the petition.

Holders of certificates of purchase or patents—did not have to sign the by-laws of the district, under the Act of 1868, but it was sufficient if they were signed by enough holders of "other evidences of title," 52 Cal. 184.

3454. The Board thus formed have power to elect one of their number President thereof, and to employ engineers to survey, plan, locate, and estimate the cost of the work necessary for reclamation, and the land needed for right of way, including drains, canals, sluices, water gates, embankments, and material for construction, and to construct, maintain,

and keep in repair all works necessary to the object in view.

Power of Board—to condemn property for reclamation purposes, § 3471.

Section cited—54 Cal. 537.

3455. The Board of Trustees must report to the Board of Supervisors of the county, or, if the district is in more than one county, then to the Board of Supervisors in each county in which the district is situated, the plans of the work and estimates of the cost, together with estimates of the incidental expenses of superintendence, repairs, etc.

Section cited—54 Cal. 538.

3456. The Board by which the district was formed must appoint three Commissioners, disinterested persons, residents of the county in which the district, or some part thereof, is situated, who must view and assess upon the lands situated within the district a charge proportionate to the whole expense and to the benefits of which will result from such works, and estimate it in gold and silver coin of the United States. The same must be collected and paid into the County Treasury as hereinafter provided, and be placed by the Treasurer to the credit of the district, and paid out for the works of reclamation upon the warrants of the Trustees, approved by the Board of Supervisors of the county. [Approved March 30; in effect July 6, 1874.]

Section cited—54 Cal. 538.

Provisions for Assessment—to pay cost of reclamation, within power of Legislature, 45 Cal. 345.

Commissioners required to jointly view and assess the lands—must all be present, or the assessment will be void, 47 Cal. 363; 49 Cal. 232; and above section did not change the rule, 52 Cal. 210; but under Act of 1868, joint personal presence upon each and every acre of the tract was not required, 52 Cal. 188.

Levy of assessment—cannot be practically made by the Legislature, and a law of such character is unconstitutional, 54 Cal. 536.

Upon the lands situated within the district—means that all the lands shall be assessed, Levee District No. 1 of Sacramento County v. Huber, February 24, 1881, 7 P. C. L. J. 165; but viewing need not be, under Act of 1868, by joint presence in person on each and every acre of the tract, 52 Cal. 188.

Payment of assessment in gold coin—may be required, 52 Cal. 189; estimation in gold and silver coin, authorized under amdt. 1874.

3457. The warrants drawn by the Trustees must, after they are approved by the Board of Supervisors, be presented to the Treasurer of the county, and if they are not paid on presentation, such indorsement must be made thereon, and they must be registered and bear interest from date of presentation; *provided*, warrants heretofore issued shall bear no interest. [Approved March 30; in effect July 6, 1874.]

Delinquent swamp land assessments—under Act of 1868, and until amdt. 1874 to this section, did not bear interest, 52 Cal. 189.

3458. If a district is situated partly in different counties, the charge must be paid into the Treasury of the county in which the particular tract may be situated.

3459. If the original assessment is insufficient to provide for the complete reclamation of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the reclamation works, the Trustees must present to the Board of Supervisors by which the district was formed, a statement of the work done, or to be done, and its estimated cost, and the Board must make an order directing the Commissioners who made the original assessment, or other Commissioners, to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment. [Approved March 30; in effect July 6, 1874.]

Original assessment insufficient—where original assessment void because only two out of the three Commissioners were present to view and assess the lands, Board of Supervisors not authorized to make or direct further assessment under this section, 49 Cal. 662; new assessment may be made to pay deficiency in work done, under section as amd. 1874, 51 Cal. 477.

Work done—provision inserted by amdt. 1874, since which further assessment may be made not only to complete work or protect it, but also to meet deficiency where work entirely finished, 51 Cal. 477.

3460. The Commissioners appointed by the Board of Supervisors must make a list of the charges assessed against each tract of land.

3461. The list must contain:

1. A description by legal subdivisions, swamp land surveys, or natural boundaries of each tract assessed.
2. The number of acres in each tract.
3. The names of the owners of each tract, if known; and if unknown, that fact.
4. The amount of the charge assessed against each tract.

[Approved March 30; in effect July 6, 1874.]

3462. The list so made must be filed with the Treasurer of the county, or if the district is situated in different counties, then the original list must be filed in the county where the petition was filed, and copies thereof, certified by the Commissioners, must be filed with the Treasurer of each of the other counties. [Approved March 30; in effect July 6, 1874.]

3463. From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitute a lien thereon.

3464. When the list, or a certified copy thereof, is filed, the Treasurer must credit thereon, to each purchaser who has paid in full for his land, eighty cents per acre, less any amount chargeable against him, and must transfer the amount to the credit of the district. [Approved March 30; in effect July 6, 1874.]

3465. The lists thus prepared and filed must remain in the office of the Treasurer for thirty days, or longer, if ordered by the Board of Trustees; and during the time they so remain any person may pay the amount of the charge assessed against any tract of land to the Treasurer, in gold coin of the United States, or in warrants of the district drawn by order of the Trustees thereof, and approved by the Board of Supervisors of the county. Where payment is made in the warrants of the district, legal interest must be computed thereon from the date thereof to the time of such payment, when said warrants must be surrendered to the Treasurer and by him canceled. [In effect April 3, 1876.]

3466. If, at the end of thirty days, or of the longer time fixed by the Trustees, all of the assessments have not been paid, the Treasurer must return the list to the Board of Trustees, who must commence actions for the collection of such delinquent assessments, with interest thereon from the time the list was returned to him, and costs, and for the enforcement of the lien on the land assessed, in the Superior Court of the county in which the same is situated, against the person to whom the same is assessed, and if assessed to "unknown" owners, then against the real owners, giving a full description by legal subdivisions or definite boundaries, and all persons having or claiming any interest therein by fictitious names. Service of complaint and summons in such actions may be made either in the manner prescribed by the Code of Civil Procedure, or if the owner is unknown, or cannot be found, by posting a copy of the summons at the Court-house door, and publishing the same once a week, for four successive weeks, in a newspaper published in the county; and such posting and publication is equivalent to personal service on all persons having or claiming any right, title, or interest in the land assessed to unknown owners, whether named as a party in such action or not. Proof of such posting and publication must be made by the certificate of the Sheriff, or affidavit of the party making the service. In case the service be made by posting and publication, the defendant,

or any person claiming any interest in the land assessed, may appear and answer the complaint within forty days after the expiration of the four weeks of posting and publication. Assessments on several tracts may be included in the same action, if listed to the same person. In such action the Court may decree and adjudge a lien against each tract for the amount assessed against the same, and may order them to be sold on execution or decree, as in other cases of sale of real estate. The judgment or decree must direct that the sale be made for gold and silver coin of the United States. The Board of Trustees must pay the moneys collected to the County Treasurer, who must place the same to the credit of the district. [In effect April 28, 1880.]

Action for the collection of reclamation assessment—must be prosecuted in name of Reclamation District, not of The People, People v. Haggin, March 29, 1881. 7 P. C. L. J. 281.

Costs in actions for recovery of delinquent swamp land assessments (which became delinquent before Codes adopted)—included fifteen per cent. of the judgment for the District Attorney prosecuting the case, 52 Cal. 190.

Service of summons—under Code Civil Procedure, see same, § 411 *et seq.*

Assessments on several tracts — may be included in the same action, see Swamp and Overflowed Reclamation District No. 10 v. Feck, December 6, 1880, 6 P. C. L. J. 741.

Default judgment may be opened—by any parties interested, Reclamation District No. 124 v. Coghill, December 23, 1880, 6 P. C. L. J. 975.

3467. The work necessary for reclamation must be executed under the direction and in the manner prescribed by the Board of Trustees.

3468. The Board must keep accurate accounts of all expenditures, which accounts, and all contracts that may be made by them, are open to the inspection of the Board of Supervisors and every person interested.

3469. The purchaser of any tract of land which may be unsold in any reclamation district at the date of filing of the by-laws takes the same, subject to all the provisions of such by-laws, and to the charges assessed in pursuance thereof.

3470. Such purchaser has all the rights and privileges enjoyed by the original signers of the by-laws, if he pays into the County Treasury twenty per cent. of the principal, one year's interest on the remaining eighty per cent., and any charges assessed against the land so purchased for the cost and expense of reclamation, with interest thereon from the date such charges became due.

3471. The Trustees of any reclamation district in which

the by-laws have been filed, may acquire rights of way for canals, drains, embankments, and other work necessary to the reclamation, and may take materials for the construction, maintenance, and repair thereof, from lands outside of as well as within the limits of the district; and if the Trustees cannot procure the consent of the owner of the lands or material needed, they, or the President acting in their behalf, may proceed under the provisions of Title VII, Part III, of the Code of Civil Procedure, for the condemnation thereof.

Reclamation district is public corporation—§§ 3452n. Powers of Board of Trustees, § 3451.

Condemnation of property for reclamation purposes—pursuant to Code Civil Procedure, see in same, Eminent Domain, §§ 1237–1263.

3472. Whenever any district, susceptible of one mode of reclamation, is entirely owned by parties who desire to reclaim the same and to manage the reclamation without the intervention of Trustees or the establishment of by-laws, they may file the petition provided for in Sections 3446 and 3447, and must state therein that they intend to undertake the reclamation on their own responsibility.

3473. If the petition is granted, the owners of the lands have all the rights, immunities, and privileges granted to Boards of Trustees; and in all proceedings the names of the owners may be used instead of the names of Trustees.

3474. Whenever the Supervisors of any county in which any reclamation district has been formed, certify to the Register that works of reclamation are in progress upon a plan and in conformity with the requirements hereinbefore provided, the payment of interest by purchasers in such districts is suspended; but if the works are not completed and accepted within four years from the date of the filing of the petition, then interest for the whole time must be charged and collected by the Register.

3475. The Supervisors shall have power, on application of the Trustees or owners of any swamp land district, to approve and let any contract to the lowest responsible bidder, and order the County Treasurer to pay for the same out of the funds of the district. [Approved March 30; in effect July 6, 1874.]

3476. Whenever the Trustees, or owners of land, if there be no Trustees, certify under oath to the Board of Supervisors who form the district, and show to their satisfaction that the works of reclamation are completed, or that two dollars per acre, in gold coin, has been expended on the works of recla-

mation, the Board of Supervisors must thereupon certify such facts to the Register. [Approved March 30; in effect July 6, 1874.]

3477. The Register must thereupon credit each purchaser in the district with payment in full for such lands, and the purchasers are entitled to patents therefor; and the Register must forward to the Treasurer of the county in which any part of the district is situated, a statement, showing the amount paid by each purchaser in the district, including interest; and the County Treasurer, after deducting all amounts chargeable against the lands in said district, by reason of moneys drawn from the "Swamp Land Fund" of the county, must divide the balance pro rata amongst the original purchasers of land in the district, or their assigns, and must pay to each purchaser, or his assigns, on demand, the amount found to be due him from such computation, out of the moneys in his hands to the credit of the "Swamp Land Fund" of the county. Neither this nor the preceding section applies to districts having outstanding indebtedness represented by Controller's warrants drawn on the State Treasury, until all such warrants are fully paid. [Approved March 30; in effect July 6, 1874.]

Credits allowed purchasers of reclaimed lands—see Act to facilitate equalization of assessments in reclamation districts, Stats. 1881, p. 70.

Swamp land funds—arising from sales, distribution of in the several county treasuries, Stats. 1874, p. 770.

3478. Districts formed under laws in force prior to May twenty-eighth, eighteen hundred and sixty-eight, may reorganize under the provisions of this chapter.

District not reorganized under this section—nor originally formed under Code, assessment void where, Reclamation District No. 3 v. Kennedy, February 7, 1881, 7 P. C. L. J. 89.

Reorganization and consolidation—of swamp land, levee and reclamation districts, § 3489.

3479. But if such districts are in debt, the Trustees thereof have no power to impair or destroy any indebtedness of the district without the consent of the creditors, but may make any arrangement with the creditors for the surrender of such indebtedness at less than par, and if authorized by the by-laws, may assess a charge on the property of the district for the payment thereof.

Funding the indebtedness—of reclamation and levee districts under charge of Reclamation Fund Commissioners, Stats. 1872, p. 835.

3480. If the Trustees of any district referred to in the preceding section redeem the bonds and warrants of such dis-

trict, they may select any unsold lands therein, and pay for the same with such bonds or warrants at par, and upon such payment the Register must issue to them certificates of purchase, and when the lands have been reclaimed they are entitled to patents thereof. Such lands may be sold by the Trustees; and if sold, the proceeds must be paid into the Fund of the district.

3481. If the owners of lands representing more than two-thirds of any body of lands within any reclamation or swamp land district, and in which the lands have not been reclaimed, desire to have the said body of lands set off from such district, they must, in addition to the petition required by section three thousand four hundred and forty-six, show to the Board of Supervisors that the said body of lands is capable of an independent reclamation. [In effect April 15, 1880.]

Requirements of petition—under section as it stood before amdt. 1889, as to existence of district before May 28, 1868, names, description, publication and signatures, 51 Cal. 307; had to state ownership and holding of certificates of purchase or patents of the lands, which had to be described by legal subdivisions or other boundaries, 51 Cal. 592.

3482. The district so set off shall be liable for its just proportion of the legal indebtedness of the original district from which it was set off, when the same shall have been ascertained by law. [In effect March 16, 1874.]

3483. All districts organized under this chapter must have a State number, and the Register, upon the receipt of a copy of a petition, must number the same, and send their number to the County Recorder of the county from which the copy came, and the Recorder must number the petition upon record in like manner, and the district must thereafter be known and designated thereby. Districts organized before May twenty-eighth, eighteen hundred and sixty-eight, may retain their number.

3484. No member of any Board of Supervisors or any Clerk of such board must receive compensation, other than his regular salary, for services performed under this chapter; but the Board of Supervisors of Sacramento county may employ a Clerk to attend to matters pertaining to swamp lands, and pay such Clerk by orders on the Swamp Land Fund of the district for which work is performed, not to exceed five dollars for each day he is actually engaged.

3485. The balance of the principal on all lands in districts having an outstanding indebtedness, which have been sold for five years, is payable at once; and on all lands in such districts which have been sold less than five years, the balance is

payable on the first of January following the expiration of five years from the date of sale.

3486. Any person owning or occupying lands upon the banks of any stream where the lands lying back of such stream are lower than the bank thereof, is responsible for all damages which may be sustained by the owners or occupants of lower lands by reason of any cut or embrasure made in the bank of such stream by the owner or occupant of the bank.

3487. If such cuts were made for the purpose of irrigation, and headgates and culverts have been made which competent persons consider sufficient to restrain the water, and where great diligence has been made to prevent damage, these facts may be pleaded and proved, in mitigation of damages.

3488. All swamp and overflowed, salt marsh, and tide lands within one mile of the State Prison at San Quentin, within the City and County of San Francisco, City of Oakland, or within five miles of the corporate limits of either, or within two miles of any incorporated city or town, are excluded from the operation of this chapter. The lands mentioned and described in an Act to survey and dispose of certain salt marsh and tide lands belonging to the State of California, approved March thirtieth, eighteen hundred and sixty-eight, and in the Act supplementary and amendatory thereto, approved April first, eighteen hundred and seventy, must be disposed of as in such Acts provided, which are hereby continued in force.

3489. Swamp land, levee, and reclamation districts formed, organized, or erected into districts under special or general laws heretofore or now in force, may reorganize and consolidate in the manner following: Whenever the owners of a majority of acres of land in each of two or more swamp land, levee, or reclamation districts, shall desire to consolidate and reorganize, they may do so by filing a notice with the County Recorder of the county in which the greatest portion of the land of the districts is situated, setting forth that they desire to consolidate and reorganize. The notice must give the exterior boundaries of the said district, the name and number of each of them, the number of acres of land that each contains, and must be signed by the persons owning the majority of acres of land in each district, and shall designate the number of acres owned by each signer in the district in which the same is situated. The County Recorder shall record and [said?] notice in a book kept for the purpose of recording papers in relation to swamp land and levee districts. He shall make a certified copy of said notice, and forward the same to

the State Land Register, who shall designate a number for the reorganized district, the same as provided for in original organizations; after which time the district shall be known as Reclamation District Number ——, and shall be under the operation and governed by the general reclamation laws of the State, as provided in "Title Eight, Chapter One," of the Political Code, and the Acts amendatory thereof; and all proceedings thereafter shall be the same as though said district was organized upon an original petition and granted by the Board of Supervisors: *provided, however*, that such consolidation and reorganization shall in no manner invalidate the indebtedness of the original districts; and all the laws, rules, and regulations for the assessing, levying and collecting taxes or assessments in said district shall remain and be in full force, and all levies, assessments and collections required for the payment of the then outstanding indebtedness in said districts, shall be the same as though they had not consolidated and reorganized until such indebtedness shall be paid and liquidated. The owners of a majority of acres of land in a compact form, capable of being embraced in a swamp land or reclamation district contiguous thereto and not a part of another district, may, by consent of the Trustees of such district, have such land embraced within such district, by filing a notice with the County Recorder of the county in which such district is organized; the notice must give the exterior boundaries of said land, the number of acres of land therein, as near as may be, and must be signed by the persons owning the majority of acres of land therein; and there shall be attached thereto or indorsed thereon a written consent of the Trustees of said district that said land be embraced therein. Said notice shall be filed with the County Recorder of the county aforesaid, and recorded by him in a book kept for that purpose. From the time of filing of such notice, said land shall become and be held as a part of such district; *provided*, that the reorganization and consolidation of any two or more districts under the provisions of this Act shall not be so construed as to legalize the original organization of any said districts reorganized and consolidated under this Act; nor shall any indebtedness or any act of any of said districts, or the officers thereof, prior to the act of reorganization and consolidation, be legalized by this Act; *provided further*, that no land not included in some of the original districts shall be included in the reorganization and consolidation without the consent of the owner. Nor shall any land purchased of the United States Government be included in the reorganization and consolidation without the consent of the owner thereof, although the said government land may have been included in some of the original districts. [Approved March 30, 1878.]

3490. Any person who shall cut, injure, or destroy any levee or other works of reclamation in any district, is responsible for all damages which may be occasioned thereby to such levee works; and an action therefor must be brought in the Superior Court of the county, or either of the counties in which such levee or works are situated, in the names of the Trustees of the district. If there be no Trustees, then the action may be brought in the name of any land-owner in the district. The amount recovered in such action must be paid to the Treasurer of the county, who must place the same to the credit of the district. [In effect April 3, 1880.]

Injuries to levees or other works of reclamation—by mobs or riots, § 4457: punishment for such and kindred offenses, Penal Code, § 607; effect of reduction of punishment, where offense of levee-cutting already committed, People v. Tisdale, Dec. 6, 1880, 6 P. C. L. J. 727.

3491. In each reclamation district in this State, formed under this Code or any statute, there shall be an election every two years, held at such time and place, in or near the district, and after such notice as the Board of Supervisors shall direct; *provided*, that the notice shall be not less than one month, and at such election each bona fide owner of lands in the district shall be entitled to vote in person or by proxy, and shall have right to cast one vote for each one dollar's worth of real estate owned by him or her in the district, the value thereof to be determined from the next preceding assessment roll of the county, and a majority of the votes cast at such election shall elect. In all elections for Trustees every owner of real estate shall have the right to cumulate his or her votes, and give one candidate as many votes as the number of Trustees to be elected multiplied by the number of dollar's worth of real estate owned by him or her shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The Board of Supervisors to which the petition for the formation of the district was presented shall, upon the application of any land-holder in the district, appoint a time and place for holding such election, which election shall be held within sixty days from the time of such application; the place shall in all cases be in or near the district. Notice of such election shall be given by publication for not less than one month in a newspaper in each county in which any portion of the lands of the district are situate, if any newspaper is published therein, and if not, then in a newspaper having general circulation in such county. The Trustees elected under the provisions of section three thousand four hundred and fifty-two shall hold office until their successors are elected under the provisions of this section. For the purposes of such election the Board of Supervisors of the county in which the whole or the larger part of the lands of any district are situate, must appoint from the land-holders

of the district one Inspector and two Judges of Election, who shall constitute a Board of Election for such district; but in case the Board of Supervisors fail to appoint, or the persons appointed fail to attend at the time and place appointed for the election, the voters present at the time and place of opening the polls may appoint the Board, or supply the place of an absent member thereof. Each member of the Board must, upon entering upon his duties, be sworn to a faithful performance thereof by some officer authorized to administer oaths. The Board of Election must canvass the votes cast and issue certificates of election to the persons elected, and must place the ballots, when canvassed, in an envelope and forward the same, sealed, to the Clerk of the Board of Supervisors. Any legally qualified voter may challenge any vote, and the Board of Election shall determine, by the oath of the parties or otherwise, as they may think proper, whether or not the person challenged is entitled to vote, and in case of challenge, either one of the Board of Election is hereby authorized to administer oaths. The polls shall be open from ten A. M. until four P. M. In case of vacancy in the Board of Trustees, the Board of Supervisors shall, by appointment, fill such vacancy. [In effect April 15, 1880.]

ARTICLE III.

SCHOOL LANDS.

§ 3494. School lands; price; payment, when to be made.
§ 3495. Affidavit on application to purchase.
§ 3496. Affidavit, when applicant is a female.
§ 3497. Occupants protected.
§ 3498. Applications must not be approved for sixty days.
§ 3499. Contests, how determined.
§ 3500. Applications for other than 16th and 36th sections.
§ 3501. Affidavit, when female is an applicant.
§ 3502. Land warrants received in payment.
§ 3503. Relinquishment of State title.

3494. The unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and lands selected in lieu thereof, must be sold at the rate of one dollar and twenty-five cents ($1 25) per acre, in gold coin, payable, twenty per cent. of the principal within fifty days from the date of the certificate of location issued to the purchaser; the balance, bearing interest at the rate of seven per cent. per annum, in advance, is due and payable within one year after the passage of any Act by the Legislature requiring such payment, or before, if desired by the purchaser. [Approved April 15, 1880; in effect January 1, 1881.]

School lands—Surveyor General is general agent of State for location of in United States Land Offices, § 3398; proceedings on application for, §§ 3406-3409.

500,000 acre grant—rights acquired by California in, upon her admission, 16 Cal. 295; 21 Cal. 330; 27 Cal. 322; 30 Cal. 603; 33 Cal. 255-256. Selection and location of, requisites, validity, etc., 7 Cal. 112; 9 Cal. 52; 21 Cal. 330, 422; 24 Cal. 609-10; 25 Cal. 252; 27 Cal. 515; 40 Cal. 33, 358. Proceeds of sales of, may properly and constitutionally be devoted to support of schools outside of township where lands situated, 22 Cal. 530.

Sixteenth sections—effect of certificate of purchase of, 52 Cal. 244.

Thirty-sixth sections—see note to repealed § 3408.

Sixteenth and thirty-sixth sections—held that mineral lands not excepted from grant of, 25 Cal. 252; but see recommendation for relief against judgment of the United States Supreme Court declaring that mineral lands not included in grant of, Stats. 1881, p. 109.

Lands selected in lieu thereof—before land surveyed by the United States, selection is unauthorized and void, 49 Cal. 446. Must not only have been selected, but must be shown to have been sold by the State before the passage of the Act to quiet land titles in California, 59 Cal. 169. Selection void when land listed over to State in place of a thirty-sixth section included within the boundaries of a confirmed Mexican grant, when there has been no final survey of the grant, 52 Cal. 213.

Certificate of Location—of State school lands, as evidence of title, 22 Cal. 640; 51 Cal. 41-42; effect of conveyance, 51 Cal. 41-2.

3495. Any person desiring to purchase any portion not less than the smallest legal subdivision of a sixteenth or a thirty-sixth section of any township which has been surveyed by the United States, must make an affidavit that he is a citizen of the United States, or has filed his intention to become so, a resident of the State, of lawful age; that he desires to purchase such lands (describing the same by legal subdivisions), under the provisions of this title; that he has not entered any portion of any sixteenth or thirty-sixth section which, together with that now sought to be purchased, exceeds three hundred and twenty acres; that he is an actual settler thereon; that there is no occupation of such lands adverse to any that he has; or if there is an adverse occupation, then the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days since the plat was filed in the United States Land Office, and that he desires to purchase the same for his own use and benefit, and for the use and benefit of no other person or persons whomsoever, and that he has made no contract or agreement to sell the same. [In effect April 28, 1880.]

Application—under Act of 1863, requirements of, 46 Cal. 389.

Right of application held not transferable—but treated as a personal privilege under corresponding Act in Stats. 1863, p. 591, which required application to be accompanied by a loyalty oath, Churchill v. Anderson, September 28, 1880, 6 P. C. L. J. 413.

Surveyed by the United States—means that the plat of the survey of the township has been approved by the Surveyor General (as

properly held in 50 Cal. 248), not (as unnecessarily held in 52 Cal. 222) when the lines have been run and the corners established. Hence application before such approval was unauthorized and void, 55 Cal. 306.

Affidavit—required under corresponding Act of 1863, had to be filed as there prescribed before any rights would attach in favor of applicant, 38 Cal. 93; 45 Cal. 588; see further, note *supra* on Right of Application. Failure to state in affidavit that applicant is desirous to purchase the land, and to describe the same by legal subdivisions, invalidated location and entry, 41 Cal. 387.

Actual settler—alone entitled to grant, see under State Lands, § 3120n.

Occupation by another—when rendered location and entry invalid, 41 Cal. 387.

Township sectionized three months—protection of occupant after, § 3497; application under Act of 1863 must show, 46 Cal. 389.

Sixty days—to make application, § 3497; adverse occupation for period of, had to be stated in application under Act of 1863, 46 Cal. 339.

No contract or agreement made to sell the same—before such provision by amdt. 1880, held that nothing in section to prohibit sale to one who has contracted to convey to another a part of the land so acquired, 51 Cal. 111.

3496. If the applicant is a female, the affidavit must show that she is entitled to purchase and hold real estate in her own name.

3497. Every occupant of a sixteenth or thirty-sixth section is protected in his occupancy for three months after the township has been sectionized; and any person settling upon a sixteenth or thirty-sixth section after a township has been sectionized has sixty days after such settlement in which to file the application required in the preceding section.

Occupant—what constitutes under Act of 1863, 41 Cal. 387.

Bona fide settlers preferred purchasers—Stats. 1874, p. 543.

Tract reserved from sale—Stats. 1876, p. 679.

3498. All applications filed in the Surveyor General's office must be retained sixty days before approval.

Retention sixty days—before approval, non-compliance does not affect validity of application, 54 Cal. 630-31. See under § 3548.

3499. If two or more claim the same land, the contest must be determined as provided in Article I of this chapter; but no person has a right to purchase by reason of any settlement or improvement, unless application is made within the time above prescribed.

Disposition of contest—§§ 3414-3416 and notes.

Suspension of rights of applicant—pending contest, 22 Cal. 279.

3500. Any person desiring to purchase any lands mentioned in section three thousand four hundred and ninety-four, except the sixteenth and thirty-sixth sections, must make

an affidavit that he is a citizen of the United States (or has filed his intention of becoming so), a resident of the State, of lawful age; that he desires to purchase such lands (describing the same by legal subdivisions), under the provisions of this title, and that there is no valid claim to such land other than that of the applicant; that he is an actual settler thereon; that he has not entered any land in part satisfaction of the unsold portion of the five hundred thousand acre grant, or of the grant in lieu of the sixteenth or thirty-sixth sections which, together with that now sought to be purchased, exceeds three hundred and twenty acres. [In effect April 28, 1880.]

Requirements of section—violated in several respects, 55 Cal. 280.

500,000 acre grant—see under School Lands, § 3494*n*.

Actual settler—alone entitled to State lands, see under note on State Lands to § 3429.

3501. If the applicant is a female, the affidavit must also show that she is entitled to purchase real estate in her own name.

3502. School land warrants issued by authority of the State are receivable in payment of the purchase money of any part of the five hundred thousand acres of land granted to the State for school purposes. Such payment must be made to the Register and the warrants canceled before the certificate of purchase is issued.

School land warrants—location of, when unauthorized or void, 34 Cal. 506; 40 Cal. 33, 358; 44 Cal. 371.

Proceeds of State school lands—investment in bonds by Board of Examiners for State School Fund, Stats. 1872, p. 54.

500,000 acre grant—see under School Lands, § 3494*n*.

3503. In all cases where any person has purchased any part of a sixteenth or thirty-sixth section from the United States, or shall hereafter make such purchase, or shall be an actual settler on any sixteenth or thirty-sixth section, and entitled to a pre-emption thereto under the laws of the United States, for which lands this State has received indemnity, or will or would be entitled to indemnity under the laws of the United States, the right of the State to such sixteenth and thirty-sixth sections, or parts thereof, are relinquished to the United States for the use of such purchasers and their assignees, and of such pre-emptors. When any person who is in good faith a settler upon any such lands, fails to acquire a title thereto from the United States, he may, within six months after such failure, apply to the State to purchase the same, and his application shall have preference over all other applications for the purchase of such lands. [Approved March 30; in effect July 6, 1874.]

Mineral lands in school sections—Act regulating sale of, Stats. 1874, p. 766, amd. (as to Section 6 of Act) by Stats. 1880, p. 130 or 26. Relation to grant of school lands, see under Sixteenth and Thirty-sixth Sections, § 3494a.

ARTICLE IV.

PAYMENTS, CERTIFICATES OF PURCHASE, AND PATENTS.

§ 3512. Payments, how made.
§ 3513. Failure to pay to work forfeiture.
§ 3514. Certificate of purchase. Evidence of title.
§ 3515. Certificates of purchase may be sold.
§ 3516. Sale to be recorded.
§ 3517. Compensation of Recorder.
§ 3518. Duplicate for lost certificate of purchase.
§ 3519. Register to prepare patents, when.
§ 3520. Patent, how executed.
§ 3521. When to issue.
§ 3522. Patents to be recorded and delivered.
§ 3523. Effect of patent issued to deceased persons.

3512. Whenever any survey or location has been made or approved, the purchaser must, within fifty days from the date of approval or location, present his copy of the same to the County Treasurer of the county in which the land, or some part thereof, is situated, who must receive the amount to be paid, and the fee for the certificate of purchase, indorsing his receipt therefor upon the certificate of location or survey, and returning it to the purchaser.

Basis of section—Stats. 1868, p. 507.

Within fifty days—from date of approval or location: provision requiring first payment within designated time, held mandatory, 39 Cal. 256; 41 Cal. 557; 51 Cal. 6; period cannot be extended on account of neglect of officer, 41 Cal. 557.

3513. In case payment is not made within fifty days, the lands described in the survey or location revert to the State without suit, and the survey or location is void. All subsequent payments must be made to the County Treasurer, in like manner, who must indorse the same upon the certificate. The Treasurer must direct the purchaser to take the certificate so indorsed to the Auditor, who must charge the Treasurer with the amount received, and make his check upon the indorsed receipt.

Corresponding Act—of April 4, 1870, was merely declaratory of the sense of the statute as previously construed, Rowell v. Perkins, October 29, 1880, 6 P. C. L. J. 501.

Payment not made within fifty days — where, applicant will be considered as having abandoned his exclusive right to purchase, 39 Cal. 259; 41 Cal. 557; hence new certificate may be issued to another applicant, 39 Cal. 256, but the money need not be received later, 41 Cal. 557, and if it is, the entry is void, and the land is open to location by another, 51 Cal. 3; effect on land contest, 51 Cal. 131.

3514. Whenever the Register receives from a County Treasurer a statement showing that an applicant for State lands has made the first payment, he must issue to the person entitled thereto a certificate of purchase, showing the class of land purchased, the number of acres, the price per acre, the date of payment, the date from which interest is to be computed, the amount paid, and the amount remaining unpaid, which certificate is prima facie evidence of title. [Approved March 30; in effect July 6, 1874.]

Prima facie evidence—substituted for primary, by amdt. 1874; definition of, Code Civ. Proc., § 1833.

General basis of section—Stats. 1868, p. 507.

Applicant for State lands—has not an assignable interest, 49 Cal. 356.

Certificate of purchase—Annulment of, 50 Cal. 84; 51 Cal. 128. Assignment of, and mortgages of land by holder of, determination of priority, 53 Cal. 649. Effect of, 51 Cal. 41; 52 Cal. 521. Evidence of, see note on Prima Facie Evidence of Title; evidence against, 50 Cal. 211; 51 Cal. 414. Judgment on, when no bar, 51 Cal. 505. Located land warrant, when may be issued upon, 49 Cal. 87. Premature, 54 Cal. 630-31. Proof of existence and of preliminary steps, 50 Cal. 169. Proof of title, when insufficient, 51 Cal. 534. Requisites, 51 Cal. 128. Scope of, 52 Cal. 521. Suspension of, 47 Cal. 461; 52 Cal. 521. Tide lands, of; when void, 40 Cal. 411, and compare 49 Cal. 33.

Prima facie evidence of title—certificate of purchase as, Code Civ. Proc., § 1925 (using term primary evidence); 50 Cal. 195; 52 Cal. 245; like provision in Act of 1868, applied to all certificates of purchase issued after the Act took effect, even on prior locations, 48 Cal. 26. Duplicate of certificate not sufficient evidence, 50 Cal. 169. Good faith of locator shown by certificate, 40 Cal. 69. Certificate does not pass title as such, but title remains in State until issuance of patent, 55 Cal. 94.

3515. Certificates of purchase, and all rights acquired thereunder, are subject to sale, by deed or assignment, executed and acknowledged before any officer authorized by law to take acknowledgments of conveyances of real property, or before the Register.

Assignee of certificate—like holder, has prima facie title, Code Civ. Proc. § 1925.

3516. All such sales must, when the deed or assignment is recorded by the County Recorder, be reported by him to the Register, to be entered in the books of his office.

3517. The Recorder is entitled to receive from the purchaser, for making such report, a fee of fifty cents.

3518. If the owner of a certificate of purchase claims that it has been lost, destroyed, or is beyond his control, the Register must take testimony concerning the loss, destruction, or reason why the same is beyond his control. But the party must, before the hearing, make affidavit that he has not sold the said certificate of purchase, or the land described therein,

and must publish a notice in some newspaper in the county where the land is situated, or if there is no newspaper published in the county, then in some newspaper of general circulation in the county, for at least four weeks, describing the certificate and the lands for which the same was issued, stating the name of the person to whom the same was issued and the person then claiming to own it, together with the time and place of the hearing. If the Register is satisfied of the loss or destruction of the certificate, or that it is beyond the control of the person owning the same, he must issue to the owner thereof a duplicate, with the word "Duplicate" written across the face thereof in red ink. Such duplicate shall have the same force and effect as the original. If there is a contest as to the issuing of a duplicate certificate, the Register may hear and determine the same, or may refer it to the proper Court, as provided in section thirty-four hundred and fourteen. [Approved March 30; in effect July 6, 1874.]

Beyond control—provisions inserted by amdt. 1874.

Affidavit—required by amdt. 1874.

3519. Whenever final payment has been made for any tract of land, the selection of which has been accepted and approved by the United States authorities, or when the tract finally paid for or reclaimed is swamp and overflowed, salt marsh, or tide lands, the Register, upon the surrender of the certificate of purchase by the person entitled to the same, must prepare a patent for the land, and send it to the Governor, together with a certificate that the laws in relation thereto have been complied with, that payment in full has been made, and that the party named in the prepared patent is entitled to it.

Surrender of certificate of purchase—pre-requisite to issuance of patent, 46 Cal. 24.

3520. The patent must then be signed by the Governor, attested by the Secretary of State, sealed with the Great Seal of the State, and be countersigned by the Register.

Patent signed by the Governor—extent of authority in performing such act, 9 Cal. 555; when signing is Governor's duty, and purely a ministerial act, 30 Cal. 596; when Governor may refuse to sign, 30 Cal. 597.

State patent generally—Annulment of, 24 Cal. 630; 25 Cal. 242; 52 Cal. 619. Collateral attack on, when permitted, 16 Cal. 296; 32 Cal. 354; 38 Cal. 80; when not permitted, 16 Cal. 296; Churchill v. Anderson, September 28, 1889, 6 P. C. L. J. 418. Conflict with United States Patent, 27 Cal. 322; 34 Cal. 506. Construction of, 23 Cal. 432; 24 Cal. 562, 610; 37 Cal. 432; 47 Cal. 52. Evidence, as, 25 Cal. 242; 29 Cal. 317. Expenses of, 33 Cal. 256. Mineral lands on school section, may issue for, 25 Cal. 252. Nature of, 16 Cal. 296; 24 Cal. 568. Partially bad and partially good, 32 Cal. 354. Party not holding the beneficial interest in the land, effect of issuance to, 33 Cal. 256. Statute of Limitations does not commence running until date of, 55 Cal. 94; against cancellation of patent for fraud, 52 Cal.

619. Swamp and overflowed lands, for, 9 Cal. 322. Void, when, 32 Cal. 314; 39 Cal. 339; 51 Cal. 325. When presumptions in favor of, have no force, 49 Cal. 213. Who may attack, 25 Cal. 213; 29 Cal. 317; 47 Cal. 181; 52 Cal. 214; who may not, 46 Cal. 234. Who is trustee for his vendees, though holding, 38 Cal. 90. When conclusive evidence of title, Kentfield v. Hayes, May 21, 1881.

3521. No patent must issue until after the expiration of one year from the date of approval of the survey or location by the Surveyor General, nor until the lands are relinquished to the State by authority of the General Land Office at Washington. Such relinquishment is not required for locations of the sixteenth and thirty-sixth sections in place, or for swamp and overflowed lands, shown to be such by the official surveys made by authority of the United States Surveyor General.

Patent not to issue—before approval of location by the United States, 52 Cal. 100.

3522. The Register must record all patents in books to be kept in his office for that purpose, and then deliver them to persons entitled thereto.

3523. Where a patent for lands is issued in the name of a deceased person, the title is vested in the heirs, devisees, or assignees of such person, in the same manner as if the patent had issued to such person during life.

Section cited—in argument, 52 Cal. 5.

State Land Commission—created by Stats. 1876, p. 798.

ARTICLE V.

SELECTION AND SALE OF UNIVERSITY LANDS.

§ 3533. Regents to select and sell certain lands.
§ 3534. Land Agent of University, duty of.
§ 3535. Certain moneys to be paid out.
§ 3536. Purchasers who have not paid up.

3533. The Regents of the University may order the selection of the one hundred and fifty thousand acres of land granted to the State for the use of an Agricultural College, and dispose of the same at the price and in the manner fixed by them.

Selection and sale of University lands—Act concerning, Stats. 1874, p. 356, amd. by Stats. 1880, p. 186 or 36.

3534. The Land Agent of the University, as the agent of the State, must select the lands according to the instructions of the Board, and issue certificates of purchase and patents to purchasers who comply with the conditions fixed by the

Board; and the Regents must invest all moneys accruing from the sale of lands as they may deem best, subject to the conditions of the Act of Congress granting such lands.

3535. All moneys, securities, or other properties arising from the sale of the seventy-two sections granted to the State for a seminary of learning, and from the sale of the ten sections granted to the State for the erection of public buildings, must be paid out of the State Treasury on the order of the Regents of the University.

Seminary lands—selection of, by State, must be approved by Secretary of Interior, 48 Cal. 467. Mineral land cannot be located as, 14 Cal. 380.

3536. All persons who have purchased any portion of either of the grants mentioned in the preceding section, and who have not paid in full therefor, must be included in the delinquent list, and the District Attorney must proceed against such delinquents as provided in Sections 3547 and 3548, and the provisions of Sections 3548 to 3556, inclusive, are made applicable to such proceedings. If such lands revert to the State, they pass under the control of and may be sold by the Board of Regents of the University.

ARTICLE VI.

PROCEEDINGS AGAINST DELINQUENT PURCHASERS.

§ 3546. Register to furnish statement of delinquents.
§ 3547. Delinquent purchasers, and proceedings against.
§ 3548. Same.
§ 3549. Service of summons.
§ 3550. Copy of decree to be filed.
§ 3551. When purchaser may be restored to rights.
§ 3552. When judgment binds assignee.
§ 3553. Compensation of District Attorney.
§ 3554. After filing decree, land subject to sale.
§ 3555. Costs of suits taxed and collected.
§ 3556. Subsequent purchasers may defend, etc.

3546. The Register must, on the first day of May of each year, forward to the District Attorney of each county a statement embracing all the lands in the county upon which payments have not been made, which statement must show the name of the purchaser, the number and date of the survey or location, and of the certificate of purchase, the amount paid, the amount unpaid, and the amount then due. No lands within any reclamation district must be embraced in such statement after the receipt by the Register of the certificate of the Board of Supervisors that works of reclamation have been commenced.

3547. Upon receipt of the delinquent list, the District Attorney must add thereto a notice that if the amount due is not paid in fifty days after the date thereof he will commence suit to foreclose the interest of purchasers in the lands, and must publish the list and notice for four weeks immediately following the date of the notice, in a newspaper published in the county, or if there is no newspaper published therein, then he must post copies of the same in at least five public places in the county.

3548. After the expiration of the fifty days, he must, in the name of the people of the State of California, commence actions in the Superior Court against all purchasers, or holders of certificates of purchase, who have not either paid the amount due, together with the cost of publication, or surrendered the title to the State, as provided in section three thousand five hundred and seventy, to obtain a judgment of foreclosure of the interest of the purchaser, or assignee of the purchaser in the land, and to annul the certificate of purchase. [In effect April 28, 1880.]

All applications, under whatsoever Act, filed in the Surveyor General's office, must be retained sixty days before approval, and must be approved (when there is no conflict) by the Surveyor General at the expiration of six months. [In effect April 28, 1880, as § 6 of amendatory Act; see Stats. 1880, p. 545.]

Superior Court—substituted for District Court by amdt. 1880.

Compare—§§ 3441, 3498.

3549. Service of the summons in such action may be made by publication in some newspaper published in the county for four weeks, or if no newspaper is published in the county, then by posting one copy of the summons for four weeks at the Court-house door of the county, and two copies in public places in the township where the land is situated.

3550. Twenty days after the entry of judgment the District Attorney must file in the office of the Register, and in the Recorder's office of the county in which the land is situated, certified copies thereof.

3551. The holder of the certificate of purchase may, at any time before such filing, pay to the Sheriff the amount due the State, and the costs of suit that have accrued up to the time of payment; whereupon the District Attorney must dismiss the suit or vacate the judgment, and the purchaser or holder of the certificate of purchase is restored to his rights in the premises.

3552. A judgment against the purchaser binds the assignee, unless the notice of the assignment was filed with the Register before the commencement of the action.

3553. The District Attorney is entitled to receive ten dollars for each suit brought, to be taxed as costs.

3554. After judgment foreclosing the interest of the purchaser or the holder of the certificate has been entered, and the certified copies filed, the land is again subject to entry and sale.

3555. Upon the rendition of a judgment foreclosing the interest of the purchaser or of his assigns in the land, and annulling the certificate of purchase, judgment for costs must be entered against the defendant; but if execution issued thereon is returned not satisfied, the judgment and costs must be paid from the principal or interest paid by the purchaser at the time of the original location.

3556. Any person having a conveyance of the whole or any portion of the lands described in any certificate of purchase, to annul which suit has been commenced, but to whom the certificate has never been surrendered, may defend such action; and if it appears to the Court that he is entitled to any portion of the lands described, and the holder of such certificate does not pay the amount due, the Court must order the certificate annulled and a new one to issue to such person upon payment into Court by him of the amount due the State upon the whole tract; and such person is thereupon entitled to two certified copies of the decree, one of which he must file in the County Recorder's office, and the other with the Register.

ARTICLE VII.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC LANDS.

§ 3566. Duplicates for lost or defaced land warrants.
§ 3567. Same.
§ 3568. Same.
§ 3569. Same.
§ 3570. Abandonment of entry or location, how made.
§ 3571. If lands sold are not the property of the State.
§ 3572. Same.
§ 3573. Certain applications made valid.
§ 3574. Fees, application of.

3566. Any person making application for a duplicate school land warrant, in lieu of one lost or destroyed, must make proof by affidavit to the Register that he is the owner of such warrant, that it has not been located, and of the facts establishing the loss or destruction thereof, and must file with the Register a bond, with two or more sureties, to be approved

by the Register, payable to the State of California, in double the value of the warrant, conditioned that the warrant will not be presented for location.

3567. When for want of a proper acknowledgment of an assignment of the original land warrant, or partial destruction or defacement thereof, or for any other cause, it cannot be made available, the applicant must prove that he is the owner of the warrant, and that it has not been located, and must file the original for cancellation with the Register.

3568. The Register must certify that the applicant is entitled to a duplicate warrant in lieu of the one proved to have been lost or destroyed or presented for cancellation, and upon presentation of such certificate to the Governor he must deliver to the applicant a duplicate warrant bearing the same number as the original warrant, with the word "Duplicate" written across the face thereof, which duplicate has the same force and effect as the original.

3569. The Register must not give the certificate until he is satisfied that the original has not been located, or, if located, that the lands have not been and will not be charged by the Federal Government as part of the five hundred thousand acres of land granted to this State.

3570. Whenever a purchaser of land upon credit desires to abandon the location or entry made by him, he may do so by conveyance of his title to the State and surrender of the certificate of purchase, or, if it has been lost, by filing an affidavit of that fact with the Register.

Abandonment—When considered to occur, 39 Cal. 256.

3571. If any land sold is not the property of the State the holder of the certificate of purchase or patent may receive in exchange therefor from the Register a certificate showing the amount paid and the class of land upon which the payment was made.

Certificate of payment—when Register not compelled to give, Hartson v. Shanklin, May 26, 1881.

3572. If the land sold was swamp and overflowed, the County Auditor of the county in which the land is situated must, upon the surrender to him of the certificate mentioned in section three thousand five hundred and seventy-one, draw his warrant in favor of the person surrendering such certificate for the amount therein specified, upon the Treasurer of the county, who must pay the same out of the Swamp and Overflowed Land Fund of the district in which the land is situated. If the land sold was not swamp and overflowed, the Controller of State, upon the surrender to him of such certificate, must

draw his warrant in favor of the person surrendering the same, for the amount therein specified, upon the Treasurer of State, who must pay the same out of the fund into which the purchase money was paid. [In effect March 30, 1878.]

3573. All applications made prior to March twenty-fourth, eighteen hundred and seventy, for the purchase of lands under the provisions of an Act to provide for the management and sale of lands belonging to the State, approved March twenty-eighth, eighteen hundred and sixty-eight, if there was not, on the twenty-fourth of March, eighteen hundred and seventy, two or more applicants for the purchase of, or conflicts between claimants of the same land, are valid, although the affidavits on which such applications were based are neither in form nor substance in compliance with the provisions of such Act.

Legalizing applications for State lands—see § 3429n.

3574. Each application for lands must be accompanied by a fee of five dollars, and no application shall be received, filed, or noted in any way until such fee is paid. The Surveyor General shall charge the same fees as are allowed the Register for like services; and all fees collected by either the Surveyor General or Register shall be paid into the State Treasury on the first Monday of each and every month, and placed to the credit of the General Fund; and said officers shall, on the first Monday of each month, make a written report to the State Controller, stating the amount of fees so paid, together with the sources from which they were derived, and the several amounts, by items. The Surveyor General and Register, whenever it may be necessary, may purchase such maps and records as the needs of their office may demand, but all claims against the State, authorized by this section, shall be certified to the State Board of Examiners, and if the same be allowed, the Board shall direct the Controller of State to draw his warrant in payment of the same, payable out of the General Fund. [In effect February 10, 1876.]

Surveyor General's disposition of fees—55 Cal. 304.

CHAPTER II.

The Yosemite Valley and Mariposa Big Tree Grove.

§ 3584. Commissioners to manage.
§ 3585. Guardian and his compensation.
§ 3586. Report of Commissioners.

3584. The Governor of this State and the eight other Commissioners appointed by the Governor on the twenty-eighth day of September, eighteen hundred and sixty-four, in accordance with the terms of an Act of Congress entitled an Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove, approved June thirteenth, eighteen hundred and sixty-four, constitute a Board to manage such premises. Any vacancy occurring in the Board may be filled by the appointment of the Governor. The Commissioners are known as "The Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," and under such name they and their successors may sue and be sued and have full power to manage and administer the grant made and the trust created by the Act of Congress, and to make and adopt all rules, regulations, and by-laws for their own government, and the government, improvement, and preservation of such premises.

Commissioners--nine in number, are civil executive officers, § 343: are State officers, People v. Ashburner, August 14, 1880, 6 P. C. L. J. 105. Superior rights to private parties claiming under Legislative grant, 41 Cal. 634.

Reference to section--see § 357.

Free trails--appropriation to purchase, and generally to improve and preserve the territory within the grant of the Yosemite Valley and Big Trees, Stats. 1881, p. 50.

3585. They may appoint a guardian of the premises, removable at their pleasure, who must perform such duties as they may prescribe, and may receive such compensation as they may fix, not to exceed five hundred dollars per annum.

3586. The Commissioners must make a report of their proceedings and of the condition of the premises through the Governor, to the Legislature, at every regular session thereof.

CHAPTER III.

State Burying Grounds.

§ 3596. Title vested in State. Who may be interred.
§ 3597. Duties of Trustees.

3596. The fee to the State Burying Ground, in the City Cemetery of the City of Sacramento, is in the people of the State of California, and there may be interred therein any person who, at the time of his death, was a State officer or a member of the Senate or Assembly.

3597. The Board of Trustees of the State Burying Ground have the control and management of the grounds and the expenditure of all moneys appropriated for the maintenance or improvement thereof.

Trustees of State Burying Ground—number of, § 343; are civil executive officers, § 343; are appointed by Governor with consent of Senate, § 368.

TITLE IX.

Revenue.

CHAPTER I. PROPERTY LIABLE TO TAXATION.
II. DEFINITIONS.
III. ASSESSMENT OF PROPERTY.
IV. EQUALIZATION OF TAXES.
V. LEVY OF TAXES.
VI. DUTIES OF THE AUDITOR IN RELATION TO REVENUE.
VII. COLLECTION OF PROPERTY TAXES.
VIII. COLLECTION OF TAXES BY THE ASSESSOR ON CERTAIN PERSONAL PROPERTY.
IX. POLL TAXES.
X. SETTLEMENTS WITH THE CONTROLLER AND PAYMENTS INTO STATE TREASURY.

CHAPTER I.

Property Liable to Taxation.

§ 3607. Property subject to taxation.
§ 3608. Shares of stock in corporations.

3607 All property in this State, not exempt under the laws of the United States, excepting growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county, or municipal corporation within this State, is subject to taxation as in this Code provided; but nothing in this Code shall be construed to require or permit double taxation. [In effect March 7, 1881.]

Property subject to taxation—Meaning of term property in this connection, § 3617, subd. 1. Solvent debts, or "credits," held property within the meaning of that word as used in Const. Cal. 1849, in 43 Cal. 336; 46 Cal. 415; and liable to taxation, 46 Cal. 415, 523; even though not due at time of assessment, 57 Cal. 524; but these decisions reversed in 51 Cal. 213, followed in 51 Cal. 309; definition under Const. Cal. 1879, see § 3617, subd. 6. Mexican grant, unsurveyed, is, 33 Cal. 150. Bridge, 19 Cal. 391. Mining claims, 2 Cal. 69; 14 Cal. 143. Water works owned

by corporation constitute taxable interest in property, 49 Cal. 638. Wharf, as object of taxation, 2 Cal. 468.

Exemptions in section—conform to Const. Cal. 1879, art. 13, § 1. Growing crops, before this provision, held beyond power of exemption, 35 Cal. 677. United States, property belonging to, exempt; as public lands generally, 18 Cal. 619; 22 Cal. 74; railroad lands, 51 Cal. 230; 52 Cal. 225; but see 43 Cal. 398; pre-emption lands, 30 Cal. 645, but not possessory claims and improvements upon the public lands, 31 Cal. 146, 210; 37 Cal. 54. Public property exempt, 34 Cal. 456; 36 Cal. 220; as property of municipal corporation, 19 Cal. 392; 36 Cal. 220; 46 Cal. 549; applies to assessment for opening street, 47 Cal. 353.

Taxation—"Capital" of a corporation, assessment upon, held valid, 54 Cal. 571. Deduction for debts, constitutionality of provision for, under Const. Cal. 1849, questioned, 43 Cal. 590; provision pursuant to Const. Cal. 1879, see § 3629, subd. 6. Deprivation of property without due process of law, not effected by, 22 Cal. 370. Double: under Const. Cal. 1849, taxation of mortgages held to be, 46 Cal. 483, 492; and see 51 Cal. 243, 370; previously, taxation of solvent debts sustained, 34 Cal. 432; 38 Cal. 461; 43 Cal. 590; 46 Cal. 415; instance of, 40 Cal. 127; since Const. Cal. 1879: prohibition of, see provision in this section; taxation of shares of stock is, § 3608; Burke v. Badlam, June 1, 1881. Equality and uniformity in, required by Const. Cal. 1849, held to prevent exemption of private property, 34 Cal. 433; overruling 22 Cal. 369; see also 37 Cal. 243; 41 Cal. 351; 43 Cal. 332; not violated by allowing previous payment of invalid taxes as a credit on present levy, 52 Cal. 601; is sole restriction on Legislative powers as to taxation, 13 Cal. 350; provision discussed, 46 Cal. 474, 475, 492; 51 Cal. 244, 251; held to apply only to direct taxation, 1 Cal. 232; 4 Cal. 46; and not to special assessments for local improvements, 12 Cal. 76; requirement of uniformity in operation applies only to laws of a general nature, 43 Cal. 432. Exemption of any species of private property unconstitutional (under Const. Cal. 1849), 2 Cal. 590; 34 Cal. 433; 35 Cal. 677; 37 Cal. 54; 43 Cal. 332; as a particular class of solvent debts, like those secured by mortgage, 43 Cal. 332; does not consist in crediting payment of previous invalid taxes, 52 Cal. 601; of charitable institutions by statute, 32 Cal. 65; of property of railroad company, when void, 37 Cal. 243; what allowed by § 3607, see note *supra*; flume not exempt, 14 Cal. 148. Legislature controls, subject only to constitutional restrictions, 35 Cal. 634; power of Legislature over, § 225a., and see 18 Cal. 629; 27 Cal. 175; 41 Cal. 147. Occupations, of, see License, § 3356a. Proceedings for, are in *invitum*, and must strictly follow the statute, 55 Cal. 286. Property subject to, note *supra*. Public purposes only, must be sought by, 49 Cal. 546. Rate may be fixed after valuation, 52 Cal. 598. Revenue system of this Code applies to San Francisco, 46 Cal. 481, and uniformly to all the counties of the State, 46 Cal. 99; Revenue districts, see under note on Tax, District of. Value, in proportion to, constitutional requirement, does not prevent rate from being fixed before value ascertained, 52 Cal. 598; provision discussed, 46 Cal. 474, 475, 492; 51 Cal. 244, 251; like provision in Const. Cal. 1879, held self-executing, 54 Cal. 360, and to oppose double taxation, Burke v. Badlam, June 1, 1881.

Tax—Assessment, distinguished from, 28 Cal. 346; 31 Cal. 241; 41 Cal. 351; 46 Cal. 555; 47 Cal. 234, 353; 51 Cal. 20; 52 Cal. 77; as basis of, see 29 Cal. 449. Assessment and collection of, must be made by officials of the district taxed, 29 Cal. 449; 39 Cal. 358; 44 Cal. 434; 46 Cal. 556; 52 Cal. 80. Cloud on title, not, 12 Cal. 298. Costs in suit for, 53 Cal. 386. Deed, § 3785a. Delinquent, § 3763a. District of, see Assessment and collection of. Duress and coercion in payment of; insufficient proof of duress, 52 Cal. 73; what constitutes, 52 Cal. 77; 53 Cal. 380; what does not constitute, 46 Cal. 596, and cases reviewed; 52 Cal. 170, 475; 53 Cal. 178; authorizes recovery, if not legally due and payment was under protest, 49 Cal. 627, and cases cited; also 23 Cal. 113. Injunction to restrain collection of, denied, 6 Cal. 41, 273; 11 Cal. 361; 12 Cal. 273, 298; 18 Cal. 303; 36 Cal. 67; when alone granted, 46 Cal. 488; 47 Cal. 647; 51 Cal. 407. Judgment for, conclusiveness of, 32 Cal. 477. License, held to be, in a certain sense, 51

Cal. 499; generally, § 3356*a*. Mortgage, see Double, under Taxation, note *supra*. Nature of, 16 Cal. 332; 34 Cal. 433. Payment under protest; office and contents of protest, 49 Cal. 627-8; see also 51 Cal. 614; 52 Cal. 77; illegal portion of tax severable, and can be recovered back, 51 Cal. 369; but must be specified in protest, 53 Cal. 380; protested tax on property beyond limits of Collector's district, recoverable, 51 Cal. 612; limitation of action for taxes paid under protest, 50 Cal. 303; when voluntary, not proof of duress, 52 Cal. 73; and not recoverable back, 52 Cal. 170; 53 Cal. 180; 53 Cal. 379; when is payment under duress, 52 Cal. 77, and further see Duress and coercion. Personal liability for, 16 Cal. 392; 20 Cal. 351; 39 Cal. 112, and see § 3716; individual pays, 13 Cal. 609. Recitals in tax deed, § 3786*a*. Remission of, not permitted, 47 Cal. 91. Sale, see § 3771*a*. School purposes, for, §§ 1817-1861; collection of, 36 Cal. 375; special, 28 Cal. 254; 39 Cal. 65. Suits, § 3808*a*. Title, see Deed, Sale; 22 Cal. 132.

Revenue Acts—Act of 1850, construed, 5 Cal. 241. Act of 1853, construed, 4 Cal. 352. Act of 1863, for special school tax in San Mateo County, held not repealed, 28 Cal. 254. Special Act of 1866, for Tehama County, construed, 37 Cal. 228.

3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also of the corporate property would be double taxation. Therefore all property belonging to corporations shall be assessed and taxed, but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor. [In effect March 7, 1881.]

Double taxation—see under Taxation, § 3607*a*.

Shares of stock—of gas corporation may be made basis for valuation of franchise, after deduction of value of tangible property, San José Gas Co. v. January, Treasurer, etc., May 20, 1881; but not also taxable to stockholders, Burke v. Badlam, June 1, 1881.

Capital stock—of bank in the hands of shareholders, held not assessable against the bank, under Revenue Act of 1861, 51 Cal. 508.

CHAPTER II.

Definitions.

§ 3617. Definition of terms.

3617. Whenever the terms mentioned in this section are employed in this Act they are employed in the sense hereafter affixed to them:

First—The term "property" includes moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to, the possession of land.

2. All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, when land is pledged for the payment and discharge thereof, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the land so pledged.

4. Improvements.

Third—The term "improvements" includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land.

2. All fruit, nut-bearing or ornamental trees and vines not of natural growth.

Fourth—The term "personal property" includes everything which is the subject of ownership not included within the meaning of the term "real estate."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term "credits" means those solvent debts, not secured by mortgage or trust deed, owing to the person, firm, corporation, or association assessed. The term "debts" means those unsecured liabilities owing by the person, firm, corporation, or association assessed to bona fide residents of this State, or firms, associations, or corporations doing business therein; but credits, claims, debts, and demands due, owing, or accru-

ing for or on account of money deposited with savings and loan corporations shall, for the purpose of taxation, be deemed, and treated as an interest in the property of such corporation, and shall not be assessed to the creditor or owner thereof. [In effect March 7, 1881.]

SUBDIVISION 1. **Property**—defined in conformity with Const. Cal. 1879, art. 13, § 1. Franchise of corporation taxable, San José Gas Co. v. January, Treasurer, etc., May 20, 1881; but not shares of stockholders also, Burke v. Badlam, June 1, 1881.

SUBDIVISION 2. Par. 2, Timber on U. S. lands included by amdt. 1881. Par. 3, Mortgage, etc., added by amdt. 1880, pursuant to Const. Cal., art. 13, § 4.

SUBDIVISION 4. **"Personal Property"** — under Revenue Act of 1861, included the capital stock of corporations, yet bank not taxable therefor, 51 Cal. 508; under Act of 1857, included what, 16 Cal. 171; under Act of 1854, included money on general deposit, 7 Cal. 37.

SUBDIVISION 6. **"Credits" and "Debts"** — provision added by amdt. 1880, see Const. Cal. 1879, art. 13, § 1, last sentence. Taxation of credits, see Property subject to taxation, § 3607*a*. Deposits in Savings Banks not taxable to depositors, Burke v. Badlam, June 1, 1881.

CHAPTER III.

Assessment of Property.

§ 3627. Property, how assessed. Taxes to.
§ 3628. Assessments, how, by whom.
§ 3629. Contents of statement required by Assessor.
§ 3630. Blank forms of statement, and affidavit therefor.
§ 3631. Statement to be filled out and returned to Assessor.
§ 3632. Power of Assessor to require affidavit and testimony.
§ 3633. Property of person neglecting or refusing to give statement, how assessed.
§ 3634. Sufficient description and survey of property, how obtained by Assessor by aid of Court.
§ 3635. Assessment of unknown or absent owners of property.
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§ 3637. Property situated in another county.
§ 3638. Consigned property.
§ 3639. Trustees, guardians, executors, and administrators.
§ 3640. Holders of stock in firm or corporation. (Repealed.)
§ 3641. Property of firm or corporation assessed where situated.
§ 3642. Undistributed property of deceased persons.
§ 3643. Ferries and toll bridges, where assessed.
§ 3644. Vessels, where assessed.
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§ 3646. Boats and small craft.
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§ 3648. Property concealed, misrepresented, etc.
§ 3649. Property not taxed in previous year.
§ 3650. Property, how listed.
§ 3651. Form of assessment book.
§ 3652. Affidavit to completed assessment book.
§ 3653. Map of property assessed in cities or towns.
§ 3654. Delivery of assessment book, etc., to Clerk of Supervisors. Notice of meeting to equalize assessments.
§ 3655. Statement by Assessor to State Board of Equalization, to show what, when made.
§ 3656. Penalty for failure of Assessor to complete assessment book or transmit statement.
§ 3657. Persons claiming ownership of property and desiring to be assessed.
§ 3658. Supervisors to furnish Assessor with maps. Costs, how paid.
§ 3659. Lists of land sold by State to be transmitted to Assessor of county where the property is situated.
§ 3660. When Assessor liable for taxes on unassessed property.
§ 3661. District Attorney to prosecute Assessor for unpaid taxes, when.
§ 3662. Judgment, when entered against Assessor.
§ 3663. Assessment of water ditches, toll roads and telegraph lines.
§ 3664. Assessment of railway property by State Board of Equalization.
§ 3665. Assessment as basis of taxation.

3627. All taxable property must be assessed at its full cash value. Land and improvements thereon shall be sepa-

rately assessed. Cultivated and uncultivated land of the same quality, and similarly situated, shall be assessed at the same value. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations. In case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. If any such security or indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year; and every contract by which a debtor is obliged to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void. [In effect March 7, 1881.]

Full cash value—defined, § 3617, subd. 5; of gas main laid in the ground, Assessor's estimate of, not revised by Courts, San José Gas Co. v. January, Treasurer, etc., May 20, 1881.

Lands—provision for assessment of, conforms to Const. Cal. 1879, art. 13, § 2; previously held, that assessment of tract owned by various parties, as an entirety, erroneous, 42 Cal. 123; but that city lots may be assessed by blocks, 43 Cal. 534; 44 Cal. 620; though not to be arbitrarily divided in the assessment, 28 Cal. 72.

Mortgages—and similar obligations, provision in section for assessment of, nearly identical with Const. Cal. 1879, art. 13, § 4, except last clause, which is taken from § 5 of same article of Constitution.

3628. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State, shall be assessed by the State Board of Equalization as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed

in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels or subdivisions not exceeding six hundred and forty acres each, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States Government, shall be assessed by sections or fractions of sections. The Assessor must, between the first Mondays of March and July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be assessed by the State Board of Equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding; but no mistake in the name of the owner, or supposed owner of real property, shall render the assessment thereof invalid. In assessing solvent credits not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this State. [In effect March 22, 1880.]

Franchises—subject to taxation, see § 3617, subd. 1, and note. Mode of assessing franchise of gas company, San José Gas Co. v. January, Treasurer, etc., May 20, 1881.

Railroad property—assessment of, see Const. Cal. 1879, art. 13, § 10.

Place of assessment—see §§ 3641-3646; provision for, follows Const. Cal. 1879, art. 13, § 10; generally, see 23 Cal. 138; 25 Cal. 301, 601; 35 Cal. 282; 38 Cal. 466; 39 Cal. 114-115.

Assessment of lands—provision follows Const. Cal. 1879, art. 13, § 3.

Assessor—or his deputies, may act, 49 Cal. 626.

Names—of all taxable inhabitants, etc.: provision cited (with cross-reference to § 3650, subd. 1), 53 Cal. 666.

Assessment—Creates and initiates lien of tax, 43 Cal. 644. Defective and invalid, § 3881*a*. District taxed, official of, must make, and same true of collection, see under Tax, § 3607*a*. Lands, of, see § 3627 and note. Legislature not to delegate its control over to judiciary, 10 Cal. 402; power of, to legalize, 25 Cal. 300; 31 Cal. 196; and see § 225*a*. Limit of time for making, merely directory, 14 Cal. 148. Listing and valuation by Assessor, essential pre-requisite to validity of all subsequent proceedings, 10 Cal. 590; 29 Cal. 452; see also 38 Cal. 223. Place of, see note *supra*. Proof of authority for, deficiency, 5 Cal. 250; of tax, as prima facie, 16 Cal. 333. Tax, distinguished from, see under Tax, § 3607*a*. Validity of, 25 Cal. 38; and see Listing and valuation. Void, when, 30 Cal. 618; 48 Cal. 427, 431.

Persons by whom it was owned or claimed, etc.—assessment to company having no such connection with the property, held void (before provision by amdt. 1880), 55 Cal. 365.

Deduction from credits—of debts due bona fide residents, pursuant to last sentence of § 1 of art. 13 in Const. Cal. 1879. Formerly, right of reduction questioned, 43 Cal. 590.

3629. He must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock M. on the first Monday in March. Such statement shall be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession or under the control or management of any coroporation of which such person is President, Secretary, Cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, township, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States Government, improvements and personal property, including all vessels, steamers, and other water craft, and all taxable State, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found, all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby.

6. All solvent credits, unsecured by deed of trust, mortgage, or other lien on real or personal property, due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he is President, Secretary, Cashier, or Managing Agent, deducting from the sum total of such crdits such debts only, unsecured by trust deed, mortgage, or other lien on real or personal property, as may be owing by such person, firm, or corporation, to bona fide residents of this State. No debt shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate; *provided*, in case of banks the statement is not required to show the debt in detail, or to whom it is owing; but the Assessor shall have the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm, or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but his statement must show the name of the person or officer who made the statement in which such property is included. [In effect March 7, 1881.]

Sworn statement—required by section, pursuant to Const. Cal. 1879, art. 13, § 8; written statement furnished to Assessor by Superintendent of a company is binding on the company, 49 Cal. 420. Under Act of 1857, neither oath nor statement had to be in writing, 18 Cal. 122, 125.

First Monday in March—property must have been in existence on, 40 Cal. 128.

SUBDIVISION 1. **Individual property**—Property subject to taxation, § 3607n.; claims to, and possession of lands, taxable, 31 Cal. 146, and disputed claim not exempt, 6 Cal. 273; but as to Government lands, see note on Exemptions in section 3607.

SUBDIVISION 2. **Firm property**—Assessment of personal property of former member of firm as, after its dissolution, void, 28 Cal. 612. Property owned by tenants in common, assessed to them jointly, 23 Cal. 54.

SUBDIVISON 3. **Corporate property**—State bonds held by foreign insurance companies, taxable, 29 Cal. 533.

SUBDIVISION 4. **Revenue district wherein property situated**—is place of assessment, see § 3628 and note.

SUBDIVISION 5. **Lands**—assessment of, § 3627 and note.

Improvements—upon public lands, taxed, 14 Cal. 154; 37 Cal. 54.

Vessels—steamers and other water-craft, where taxed, see §§ 3644-3646.

Bonds—State, taxable where owned abroad but held here, as by foreign insurance companies, 29 Cal. 533; are taxable property, see § 3617, subd. 1, but United States bonds exempt, 29 Cal. 533.

Mortgages—and like obligations, how assessed, see § 3627 and note.

SUBDIVISION 6. **Solvent Credits**—definition of terms "credits" and "debts," § 3617, subd. 6; deduction of debts due bona fide residents, see § 3628 and note.

3630. The Board of Supervisors must furnish the Assessor with "blank forms" of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ——— ———, do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am President, Cashier, Secretary, or Managing Agent, owned, claimed, possessed, or controlled at twelve o'clock M. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county, or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are owing to bona fide residents of this State, or to firms or corporations doing business in this State." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform, substantially, to the preceding form. [In effect March 22, 1880.]

3631. The Assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out.

3632. Every Assessor shall have power:

First—To require any person found within such Assessor's respective county to make and subscribe an affidavit, giving his name and place of residence.

Second—To subpœna and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his respective county; and he may exercise this power in any county where the persons whom he desires to examine may be found, but shall have no power to require such persons to appear before him in any other county than that in which the subpœna is served upon them. Every person who shall refuse to furnish the statement hereinbefore required in this chapter, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the Assessor, as above provided, shall, for each and every refusal, and as often as the same is repeated, forfeit to the people of the State the sum of one hundred dollars, in gold coin of the United States, to be recovered by action brought in their name by the respective Assessor in any Police or Justice's Court. In case such affidavit shall show the residence of the person making the same to be in any county other than that in which it is taken, or the statement shall disclose property in any county other than that in which it is made, the Assessor shall, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the Assessor of the county in which such residence or property is therein shown to be. One-half of all moneys recovered by any Assessor under the provisions of this section must by him be paid into the Treasury of his county, and the other half may be retained by the Assessor for his own use. [In effect March 24, 1874.]

3633. If any person, after demand made by the Assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the Assessor must note the refusal on the assessment book, opposite his name, and must make an estimate of the value of the property of such person; and the value so fixed by the Assessor must not be reduced by the Board of Supervisors.

Basis of section—Stats. 1861, p. 423.

3634. When the Assessor has not received from the owner of a tract of land the statement required by section three thousand six hundred and twenty-nine, or when such statement does not sufficiently describe a tract of land to enable the Assessor to assess the same as required by law, and the owner or his agent, or in case they cannot be found or are unknown, the person in possession thereof, neglects for ten days after demand by the Assessor to furnish said Assessor with such description, the Assessor shall cite such owner, or agent, or person in possession, to appear before the Superior Court of the county wherein such land is situated, within five days after service of such citation, and the said Superior Court shall, upon the day named in such citation, to the exclusion of all other business, proceed to hear the return and answer of the said owner, or agent, or person in possession, to the said citation; and if the Court shall find that the land has not been surveyed or divided into subdivisions of six hundred and forty acres, or less, so that each part or parcel may be described by metes and bounds, then the Court shall, by order duly entered in open Court, direct the County Surveyor to make a survey, and define the boundaries and location of said land by parcels or subdivisions not exceeding six hundred and forty acres each, and deliver the same to the County Assessor. The expense of making such survey and description by the County Surveyor shall be a lien upon the land, and shall, when approved by the said Superior Court, be certified by said Court to the Tax Collector of the county where the land is situated, and be added to the taxes upon said land, and be collected as other taxes are collected. [In effect March 22, 1880.]

Description of lands in parcels—or subdivisions, required in statement by § 3629, subd. 5.

3635. If the owner or claimant of any property, not listed by another person, is absent or unknown, the Assessor must make an estimate of the value of such property.

Owner—of record, not occupant, held proper party to assess for special school tax, 39 Cal. 65.

Where owner not found—his property may be assessed, 13 Cal. 617; 14 Cal. 148; 29 Cal. 533.

Absent owner—known or unknown, how assessed, § 3636.

3636. If the name of the absent owner is known to the Assessor, the property must be assessed in his name; if unknown, the property must be assessed to "unknown owners."

Where name of owner known—property must be assessed in his name, 13 Cal. 609; 32 Cal. 328; and the given name must not be left blank, 47 Cal. 618.

Where name of owner unknown—property must be assessed to "unknown owners," and assessment to a party and "all owners and

claimants known or unknown" or like terms, is void, 53 Cal. 666; 54 Cal. 522; 55 Cal. 365. See previous rulings in same direction, 13 Cal. 609; 30 Cal. 536; 31 Cal. 480; 32 Cal. 331; contra, 23 Cal. 287; 29 Cal. 326. Requirements of Revenue law of 1854, 25 Cal. 38. Assessment of part of lot, arbitrarily divided, to unknown owners, held illegal, 28 Cal. 72.

3637. The Assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same, by mail or express, to the Assessor of the proper county, who must assess the same as other taxable property therein.

Migratory live stock—under special act regulating assessment of. (Stats. 1874, p. 376), statement as to intended removal of stock from county during year had to be demanded by the Assessor, 53 Cal. 676, but Act declared unconstitutional, in People v. Townsend, December 28, 1880, 6 P. C. L. J. 920. Assessment of animals temporarily pasturing in any county, Stats. 1872, p. 754.

3638. All personal property consigned for sale to any person within this State from any place out of this State must be assessed as other property.

3639. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his repsentative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

3640. [Repealed. Approved March 7, 1881.]

3641. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

County where property situated—assessment in, see § 3628.

3642. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

No distribution of estate—until all taxes paid, § 3752.

3643. Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries, must be assessed and the taxes paid in the county where located. The value of the franchise and water craft, and of toll bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll bridges. [In effect March 22, 1880.]

3644. All vessels of every class which are by law required to be registered must be assessed and the taxes thereon paid only in the county, or city and county, where the same are registered, enrolled or licensed.

Vessels, where taxable—2 Cal. 590; 35 Cal. 283.

3645. Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this State, the owners of which reside in this State, must be assessed in this State.

3646. All boats and small craft not required to be registered, must be assessed in the county where their owner resides.

3647. Money and property in litigation in possession of a County Treasurer, of a Court, County Clerk, or Receiver, must be assessed to such Treasurer, Clerk, or Receiver, and the taxes be paid thereon under the direction of the Court.

Property in litigation—held taxable, 6 Cal. 273; as money in hands of a County Treasurer, 30 Cal. 249.

3648. Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the Board of Supervisors.

3649. Any property discovered by the Assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

3650. The Assessor must prepare an assessment book, with appropriate headings, alphabetically arranged, unless otherwise directed by the State Board of Equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.
2. Land, by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres (not exceeding in each and every tract, six hundred and forty acres), locality, and the improvements thereon. When any tract of land is situate in two or more school, road, or other revenue district of the county, the part in each township or district must be separately assessed together with the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property, does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. The assessment of the franchise, roadway, roadbed, rails, and rolling stock of any railroad, as apportioned to his county by the State Board of Equalization; and also such other apportionments of such franchises, roadways, roadbeds, rails, and rolling stock as may be made by such Board, and furnished to him for the purpose of taxation in any district in his county. Taxable improvements owned by any person, firm, association, or corporation, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value shall, however, be assessed against the exempt land, nor under any circumstances shall the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. When any property, except that owned by a railroad or other quasi-public corporation, is subject to, or affected by a mortgage, deed of trust, contract or other obligation by which a debt is secured, he must enter, in the proper column, the value of such security, and deduct the same. In entering assessments containing solvent credits subject to deductions, as provided in section three thousand six hundred and twenty-eight of this Code, he must enter, in the proper column, the value of the debts entitled to exemption, and deduct the same. In making the deductions from the tatal value of property assessed, as above directed, he must enter the remainder in the column provided for the total value of all property for taxation. Each franchise must be entered on the assessment roll without combining the same with other property or the valuation thereof.

16. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

17. Such other things as the State Board of Equalization may require. The State Board of Equalization may direct the book to be otherwise than alphabetically arranged in any county, or city and county, of this State.

Assessment book—tax list or assessment roll is the only record of Assessor's final judgment as to the value of the property, 49 Cal. 415; sufficiency of assessment roll, 33 Cal. 171; form of, § 3652; affidavit to, § 3652; disposition of, § 3654.

SUBDIVISION 1. **Name of party assessed—must be either his true name, or one by which he has been known, else assessment void, 47 Cal. 591; subdivision cited, 53 Cal. 666; assessment must be shown to have been made (under Act of 1861) to, and to have named, party bound to pay the taxes, or unknown owners, 37 Cal. 37, 41.**

SUBDIVISION 2. **Metes and bounds—excepted portion of tract must be described by, 48 Cal. 427; omission to give, made assessment defective (under law of 1857), 13 Cal. 609.**

Description—sufficient for identification, 13 Cal. 328; 25 Cal. 296; 33 Cal. 150; insufficient, 13 Cal. 609; 14 Cal. 131; 39 Cal. 670; 48 Cal. 427, 431; 55 Cal. 286.

Improvements—general description sufficient, 23 Cal. 127; description held sufficient, 33 Cal. 171.

SUBDIVISION 4. **Personal property—under Revenue Act of 1856, lumping assessment insufficient, 16 Cal. 167.**

SUBDIVISION 5. **Valuation of real estate—absence of as to part of tract not sold, invalidates assessment, 48 Cal. 631; separate valuation required for each of several parcels assessed to same person, 47 Cal. 408.**

3651. The form of the assessment book shall be as directed by the State Board of Equalization, and in those counties, or cities and counties, for which said Board does not prescribe a different form, it must be substantially as follows: [In effect March 7, 1881, see form next page.]

Entries in assessment-book—under Act of 1861, placing value of the land and of the improvements thereon in separate columns, though unnecessary, did not invalidate assessment, 44 Cal. 620. Figures in valuation column must show that they represent money, 27 Cal. 50; 39 Cal. 618; 31 Cal. 132; 34 Cal. 571; dollar mark, when need not be repeated, 33 Cal. 171. Valuation of separate parcels of land (assessed to one owner) must not be put in the column under "Description of Property," 47 Cal. 408; and assessment invalid where different parcels of property not separately valued and set down in separate columns, 39 Cal. 511; where each piece of improvement itemized, even without dollar marks, assessment sufficient, 33 Cal. 171. Arrangement of columns in different order or under different headings, from form given in Act of 1861, does not necessarily invalidate assessment, 39 Cal. 511; nor does extension of name beyond line of column, or slight discrepancy therein, 39 Cal. 513.

Assessment Book of the Property of —— County, for the year 18—, assessed to the owner when known, and if not known, to unknown owner.

Remarks		
Poll tax		
Total tax		$
Total value of all property after equalizations by the State Board of Equalization		$
Total value of all property for taxation		$
Deductions on account of debts due bona fide residents		$
Deductions on account of mortgages, deeds of trust, etc.		$
Total value of all property		$
Amount of money		$
Value of personal property		$
Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon		$
Value of city and town lots		$
Value of improvements thereon		$
Value of real estate other than city and town lots		$
School, road, or other district in which located		$
Number of acres		
DESCRIPTION OF PROPERTY. Real estate other than city and town lots. City or town lots. Block		
Lot		
Fraction		
Range, E. or W		
Township, N. or S		
Section		
Subdivision of section		
Residence		
Taxpayers' names		
When tax paid		

Personal property. (Here items may be enumerated in the space to column for number of acres.)

3652. On or before the first Monday in July, in each year, the Assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows: "I, ———, Assessor of (or Deputy Assessor, as the case may be), ——— County, do swear that between the first Monday in March and the first Monday in July, eighteen hundred and ———, I have made diligent inquiry and examination to ascertain all the property within the county (or within the subdivision thereof assessed by me, as the case may be), subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the Assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill-will or otherwise; nor allowed any one to escape a just and equal assessment through favor, or reward, or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment. [In effect March 7, 1881.]

3653. The Assessor must, when directed so to do by the Board of Supervisors, in a map book make a plan of the various blocks within any incorporated city or town, and mark thereon in each subdivision the name of the person to whom it is assessed.

Basis of section—Stats. 1861, p. 426.

3654. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the Clerk of the Board of Supervisors, who must immediately give notice thereof and of the time the Board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the Board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

Return of assessment-roll—to Clerk of Supervisors, time for, under previous Statute, held directory merely, 48 Cal. 144.

3655. On the first Monday in July in each year the Assessor of each county must transmit to the State Board of Equalization a statement showing:

1. The several kinds of personal property;
2. The average and total value of each kind;
3. The number of live stock, number of bushels of grain, number of gallons of wines or liquors, number of pounds or tons of any article sold by the pound or ton;

4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

3656. Every Assessor who fails to complete his assessment book or who fails to transmit the statement mentioned in the preceding section to the State Board of Equalization, forfeits the sum of one thousand dollars, to be recovered on his official bond, for the use of the county.

3657. Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

3658. The Board of Supervisors must provide maps for the use of the Assessor, showing the private lands owned or claimed in the county, and, if surveyed under authority of the United States, the divisions and subdivisions of the survey; if held under Spanish grants, the exterior boundaries of such grants and the number of acres claimed. Maps of cities and villages, or school districts, may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the County General Fund.

3659. On or before the first Monday in March in each year, the Surveyor General of the State and the Tide Land Commissioners must make out and transmit to the Assessor of each county where lands or lots lie that may have been sold by the State, for which certificates of purchase, patents, or deeds have issued during the year preceding, certified lists of such lands or lots, giving a description thereof by congressional divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

Tide-land commissioners—Board of, abolished by repeal of §§ 365 and 698.

3660. The Assessor and his sureties are liable on his official bonds for all taxes on property within the county, which, through his willful failure or neglect, is unassessed.

Official bonds—§§ 947-986.

3661. The District Attorney must, after the Assessor completes the assessment book for the year, commence an action on the Assessor's bond for the amount of taxes lost from such willful failure or neglect.

3662. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

3663. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll roads, or telegraph lines, must be assessed the same as real estate by the Assessor of the county, at a rate per mile for that portion of such property as lies within his county. [In effect April 15, 1880.]

Telegraph line—connected with Central Pacific Railroad, taxable so far as it lies within limits of State, 43 Cal. 398.

3664. On or before the first Monday in May in each year, the State Board of Equalization shall assess the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county. The President, Secretary, Cashier, or Managing Agent, or such other officer as the State Board of Equalization may designate, of any corporation operating any railway in more than one county in this State, shall furnish said Board, on or before the first Monday of April in each year, a statement signed and sworn to by one of such officers, showing in detail for the year ending on the first Monday in March in such year:

(*a*) The whole number of miles of railway owned, operated, or leased in the State by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind located in the State.

(*b*) Also, a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, freight, and other cars or property used in operating or repairing such railway in this State, and on railways which are parts of lines extending beyond the limits of this State. The return shall show the actual amount of rolling stock in use on the corporation's line in the State during the year for which the return is made. The return shall show the amount of rolling stock, the annual gross earnings of the entire railway, and the proportionate annual gross earnings of the same in this State, as nearly as practicable, and all the property designated hereafter in this section, and such other facts as the State Board of Equalization may in writing require. If such officer or officers so designated shall fail to make and furnish such statement, said Board of Equalization shall fix the value of and proceed to assess the property of the corporations so failing; the valuation fixed by them shall be final and conclusive. The said property shall be assessed at its actual value. Assessment shall be made upon the entire railway within the State, and shall include the right of way, roadbed, track, bridges, culverts, and rolling stock. The depots, station grounds, shops, buildings, and gravel beds shall be assessed by the Assessor of the county where situated, as other property. On or before the fifteenth day of May in each year, said Board shall transmit to the County Assessor of each

county through which any railway, operated in more than one county, may run, a statement showing the length of the main track or tracks of such railway within the county; together with a description of the whole of said tracks within the county, including the right of way by metes and bounds, or other description sufficient for identification, and the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of such railway within this State. Said statement shall be entered on the assessment roll of the county. At the first meeting of the Board of Supervisors after such statement is received by the County Assessor, they shall make and cause to be entered in the proper record book an order stating and declaring the length of the main track, and the assessed value of such railway lying in each city, town, township, school district, or lesser taxing district in their county through which such railway runs, as fixed by the State Board of Equalization, which shall constitute the taxable value of said property for taxable purposes in such city, town, township, school, road, or other district; and the Clerk of the Board of Supervisors shall transmit a copy of each order or equalization to the City Council or Trustees, or other legislative body of incorporated cities or towns, the Trustees of each school district, and the authorized authorities of other taxation districts through which such railway runs. The taxes on said property, for State and county purposes, after collection by the County Collector, shall be paid over to the County Treasurer as other taxes. All such railway property shall be taxable upon said assessment, at the same rates, by the same officers, and for the same purposes, as the property of individuals within such counties, cities, towns, townships, school districts, and lesser taxation districts respectively. Any person dissatisfied with an assessment made by said Board of Equalization against his or its property, may, within five days after such assessment is made and entered of record on the books of said Board, by written petition apply to said Board to have the same corrected in any particular. Said petition must state the grounds of objection to such assessment, and must be filed with the Clerk of the Board. The Board must fix a time for hearing said petition, which must be not less than five nor more than ten days from the time the same is filed, and must, upon such hearing, receive such proofs as may be offered by the petitioner, or by the Attorney General, or any other person appearing against such petition, and such other proofs as, in the judgment of the Board, bear upon the question at issue. By an order of the Board, or upon the demand of the petitioner, the proofs shall be reduced to writing by a phonographic reporter. If the Board do not order the proofs to be reduced to writing by such reporter, but the same is done

upon the demand of the petitioner, the petitioner must pay the expenses thereof. After hearing such proofs, the Board shall, within ten days, determine, in writing, upon the matters involved in the petition and proofs, and may alter, in conformity with such determination, the assessment complained of. Any person feeling aggrieved at such determination who shall pay the tax upon the assessment complained of, and may within ten days after such payment, bring an action in the Superior Court of the county in which the tax, or any part thereof, has been paid, against the Board of Equalization, and in the complaint may allege any fact averred in his petition filed with said Board, showing the illegality of such tax in whole or in part, or that the property in whole or in part was assessed for more than its actual value. A copy of the complaint must, within thirty days after it has been filed, be served upon the Chairman or Clerk of said Board, and said Board shall have thirty days in which to answer or demur to the same. At the time the Board answers or demurs, it may demand that the suit be tried in the Superior Court of Sacramento County. The provisions of the Code of Civil Procedure, relating to pleadings, proofs, trials, and appeals shall be applicable to the proceeding herein provided for, and the testimony taken before the Board of Equalization may be read in evidence, and in such proceeding the Court shall have power to determine the matters involved in the issue, and in making such determination may ascertain whether the property was taxed or assessed in proportion to its value, and if the determination is in favor of the petitioner, as to the illegality of the tax in whole or in part in excess of its actual value, it shall, by its judgment, direct the return of the tax paid, or of such part thereof as may have been illegally exacted, or exacted in excess of the actual value of the property. Upon presentation of a certified copy of such final judgment to the Controller, he shall draw his warrant upon the State Treasurer for the amount of such judgment, and the Treasurer shall pay the same out of any funds in the State Treasury not otherwise appropriated. At the next settlement thereafter made by the Controller with the County Treasurer of any county that received any portion of said illegal tax, he shall require the Treasurer thereof to pay such portion into the State Treasury to reimburse the State for the advance made on said judgment. The Board of Equalization may direct the District Attorney of any or every county interested, and the Attorney General, to defend for such Board, any proceedings commenced under the provisions of this section. [In effect March 14, 1881.]

Assessment of railroad property—by State Board of Equalization, Const. Cal. 1879, Art. 13, § 10; lying within limits of State, authorized, 43 Cal. 398.

Provisions of Code of Civil Procedure—pleadings, §§ 420-476; proofs (evidence) §§ 1823-2104; trials, §§ 588-662; appeals, §§ 936-980.

3665. The assessment made by the County Assessor and the State Board of Equalization, shall be the only basis of taxation for the county, or any subdivision thereof (except in incorporated cities and towns, and may also be taken as such basis in incorporated cities and towns when the proper authorities may so elect.) All taxes upon townships, roads, school, or other local districts, shall be collected in the same manner as county taxes. [In effect March 14, 1881.]

CHAPTER IV.

Equalization of Taxes.

ARTICLE I. COUNTY BOARDS OF EQUALIZATION.
II. STATE BOARD OF EQUALIZATION.

ARTICLE I.

COUNTY BOARDS OF EQUALIZATION.

§ 3672. Supervisors, when to equalize assessment.
§ 3673. Supervisors empowered to equalize assessment.
§ 3674. No reduction to be made unless on application of person assessed.
§ 3675. Examination of person assessed by Supervisors for purposes of equalization.
§ 3676. Supervisors may subpœna witnesses and take evidence.
§ 3677. Assessor and Deputy to attend upon hearing of application.
§ 3678. Abstract of incumbrances furnished by Recorder, and action thereon.
§ 3679 Supervisors to use records in equalizing assessments.
§ 3680. Preservation of evidence taken before the Board. (Repealed.)
§ 3681. Supervisors may revise assessment list and direct new assessments, but only after notice to persons interested.
§ 3682. Clerk's record of alterations, etc., and oath to correctness of same.

3672. The Board of Supervisors of each county must meet on the first Monday of July in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the fourth Monday in July.

3673. The Board has power, after giving notice in such manner as it may, by rule, prescribe, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value of such property in money. [In effect March 22, 1880.]

County Boards of Equalization—provided for by Const. Cal. 1879, Art. 13, § 9, under which they can alter individual assessments (but not the entire assessment roll), Wells, Fargo & Co. v. State Board of Equalization, September 18, 1880, 6 P. C. L. J. 358. Meeting without notice, 12 Cal. 273; 18 Cal. 629. Presumed to do their duty and correct any inequality in assessment, 23 Cal. 111. Sessions need not be continuous, 34 Cal. 445. Overvaluation which may be corrected by, 37 Cal. 321.

Increase of assessment—by Board, filing of complaint required for, 44 Cal. 324; 49 Cal. 642; complaint by District Attorney, when nugatory and insufficient, 39 Cal. 673; may be made (under Section as it stood before amendment) after refusal of application for reduction, 46 Cal. 671.

Cancellation of assessment—beyond power of Board, 44 Cal. 613, 619; 46 Cal. 523; 50 Cal. 283.

3674. No reduction must be made in the valuation of property, unless the party affected thereby, or his agent, makes and files with the Board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made.

Application for reduction—refusal of, did not prevent subsequent increase of assessment, 46 Cal. 671; such refusal is not in excess of jurisdiction, 50 Cal. 283. Necessary where party objects to tax, on the ground that his property was not assessed at its true value, 41 Cal. 351.

3675. Before the Board grants the application, or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application, touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

3676. Upon the hearing of the application the Board may subpœna such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

3677. During the session of the Board the Assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the Board.

Basis of section—Stats. 1861, p. 427.

3678. To assist the Assessor in the performance of his duties, the Recorder must annually transmit to the Assessor, on or before the first Monday in April, a complete abstract of all mortgages, deeds of trust, contracts, and other obligations by which any debt is secured, remaining unsatisfied on the records of his office, not barred by the statute of limitation, at twelve o'clock meridian, on the first Monday in March of said year. Such abstract shall be written under appropriate headings, to embrace all information requisite for the Assessor, in a book or books to be furnished by the Board of Supervisors upon the requisition of the Assessor. Should any such list be found to contain any instrument relating to lands situated in more than one county, it shall be the duty of the Assessor to transmit to the State Board of Equalization all information relating thereto; and it shall be the duty of the said Board to

attach an apportionment of valuation of such instrument to be assessed in each county, and the Board shall transmit to the Assessor of each county mentioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in each county. The valuation so set by said Board shall be final, and the Assessor shall accept said valuation and charge said assessment upon said instrument accordingly. Should the said list contain any instrument mortgaging or pledging two or more subdivisions of land, or land assessed in two or more subdivisions, in the same county, township, district, or city, the Assessor shall apportion the amount of assessment to be deducted from each subdivision on account of assessment against said instrument. Any assessment on a mortgage or deed of trust, which has been erroneously taxed to the mortgagee or party loaning the money, when the same has been paid or satisfied prior to the first Monday in March, shall be valid only as against the real estate from the assessment on which a deduction had been previously made. When partial payments have been made on a debt, secured by mortgage or deed of trust, the owner is authorized to make the proper deduction, listing only the balance due on the first Monday in March. When necessary, the Board of Supervisors of each county must provide for the payment of such additional clerical force as may be required to enable the County Recorder to comply with this section. [In effect March 22, 1880.]

3679. The Board must use the abstract and all other information it may gain from the records of the County Recorder or elsewhere, in equalizing the assessment of the property of the county, and may require the Assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the Assessor before the delivery of the assessment book to the Clerk of the Board. [In effect March 22, 1880.]

Before amendment 1880—omitting provision against assessment of non-resident of county, section was based on Stats. 1861, p. 419.

3680. Sections thirty-six hundred and eighty and thirty-eight hundred and eighty-seven of said Code are hereby repealed. [In effect March 22, 1880.]

Preservation of evidence—taken before the Board provided for by repealed Section; before which, held not within duty of Clerk or Board, 32 Cal. 582; 34 Cal. 352; Board was also required (before amdt. 1874) to declare the legal principles on which it had acted; but mistakes therein held not reviewable on certiorari, 46 Cal. 670.

3681. During the session of the Board, it may direct the Assessor to assess any taxable property that has escaped as-

sessment, or to add to the amount, number, or quantity of property when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries) when any assessment made by him is deemed by the Board so incomplete as to render doubtful the collection of the tax; but the Clerk must notify all persons interested, by letter deposited in the Post Office or Express, post-paid, and addressed to the person interested, at least ten days before action taken, of the day fixed when the matter will be investigated,

Board may direct Assessor—to enter on the assessment roll property not assessed, but may not itself add to the assessment, 28 Cal. 111.

Notice to owner requisite—13 Cal. 325.

3682. The Clerk of the Board must record, in a book to be kept for that purpose, all changes, corrections, and orders made by the Board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the Board, and on or before the first Monday of August must deliver the assessment so corrected to the County Auditor, and accompany the same with an affidavit thereto affixed, subscribed by him, as follows:

"I, ——, do swear that, as Clerk of the Board of Supervisors of —— County, I have kept correct minutes of all the acts of the Board touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized."

ARTICLE II.

STATE BOARD OF EQUALIZATION.

§ 3692. Powers and duties of Board.
§ 3693. Equalization of assessments.
§ 3694. Statement, whence obtained when County Auditor fails to forward it.
§ 3695. Statement of changes made by Board, sent to County Auditors. Same as evidence.
§ 3696. Board to notify Supervisors of rate of tax to be levied.
§ 3697. Penalty for refusing to obey rules and regulations of Board.
§ 3698. Prosecution of Assessor fraudulently assessing property.
§ 3699. Clerk and members of Board may administer oaths.
§ 3700. Salary of members and of Clerk.
§ 3701. Salary of Clerk. (Repealed.)
§ 3702. Traveling expenses, office and incidentals.
§ 3703. Official bonds of members of the Board. (Repealed.)
§ 3704. Duty of Board upon failure of county Boards to appoint Assessors, etc.
§ 3705. State Board may extend time.

3692. The powers and duties of the State Board of Equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business.

2. To prescribe rules and regulations, not in conflict with the Constitution and laws of the State, to govern Supervisors when equalizing, and Assessors when assessing.

3. To make out, prepare, and enforce the use of forms in relation to the assessment of property.

4. To hold regular meetings at the State Capitol on the second Monday in each month, and such special meetings as the Chairman may direct.

5. To annually assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State, at their actual value, on the first Monday in March, at twelve o'clock M., and to apportion such assessment to the counties, and cities and counties, in which such railroads are located, in proportion to the number of miles of railway laid in such counties, and cities and counties, in the manner provided for in section three thousand six hundred and sixty-four of said Code.

6. To equalize the assessment of each mortgage, deed of trust, contract, or other obligation by which a debt is secured, and which affects property situate in two or more counties, and to apportion the assessment thereof to each of said counties.

7. To transmit to the Assessor of each county, or city and county, its apportionment of the assessments made by said Board upon the franchises, roadways, roadbeds, rails, and rolling stock of railroads; and also its apportionment of the assessments made by such Board upon mortgages, deeds of trust, contracts, and other obligations by which debts are secured, in the manner provided for in section three thousand six hundred and sixty-four of said Code.

8. To meet at the State Capitol on the third Monday in August, and remain in session from day to day (Sundays excepted), until the third Monday in September.

9. At such meeting to equalize the valuation of the taxable property of the several counties in this State for the purpose of taxation; and to that end, under such rules of notice to the Clerk of the Board of Supervisors of the county affected thereby as it may prescribe, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value in money of the property assessed, and to fix the rate of State taxation, and to do the things provided in section three thousand six hundred and ninety-three of said Code.

10. To visit as a Board, or by the individual members

thereof, whenever deemed necessary, the several counties of the State, for the purpose of inspecting the property and learning the value thereof.

11. To call before it, or any member thereof, on such visit, any officers of the county, and to require them to produce any public records in their custody.

12. To issue subpœnas for the attendance of witnesses or the production of books before the Board, or any member thereof; which subpœnas must be signed by a member of the Board, and may be served by any person.

14. To appoint a Clerk; prescribe and enforce his duties. The Clerk shall hold his office during the pleasure of the Board;

15. To report to the Governor, annually, a statement showing:

First—The acreage of each county in the State that is assessed.

Second—The amount assessed per acre.

Third—The aggregate value of all town and city lots.

Fourth—The aggregate value of all real estate in the State.

Fifth—The kinds of personal property in each county, and the value of each kind.

Sixth—The aggregate value of all personal property in the State.

Seventh—Any information relative to the assessment of property and the collection of revenue.

Eighth—Such further suggestions as it shall deem proper.

16. To keep a record of all its proceedings. [In effect April 3, 1880.]

Section amended in 1880—to meet requirements of Const. Cal. 1879.

State Board of Equalization—establishment of, in Political Code, held constitutional, under Const. Cal. 1849, 46 Cal. 473. Powers of, under Const. Cal. 1879, § 9, Art. 13, held limited to equalizing county assessment rolls, and not to extend to alteration of individual assessments (mentioned in subd. 9 of this Section), in Wells, Fargo & Co. v. State Board of Equalization, September 18, 1880, 6 P. C. L. J. 358.

3693. When, after a general investigation by the Board, the property is found to be assessed above or below its full cash value, the Board may, without notice, so determine, and must add to or deduct from the valuation:

1. The real estate;

2. Improvements upon such real estate;

3. The personal property, except money, such per centum respectively as is sufficient to raise or reduce it to its full cash value. [In effect April 3, 1880.]

Changes in section—repealed 1876; but re-enacted 1880.

Section held unconstitutional—as it stood (under Const. Cal. 1849), before its repeal in 1876, because in effect constituting the members of the Board Assessors, 47 Cal. 659.

3694. If the County Auditor fails to forward to the State Board of Equalization the statement provided for in section three thousand seven hundred and twenty-eight, the Board must obtain the statement, or so much thereof as is necessary, from other and reliable sources. [In effect April 1, 1876.]

3695. When the equalization among the several counties is completed, the Clerk of the Board must transmit to each County Auditor a statement of the changes made by the Board in the assessment roll of the county, or in any assessment contained therein, and of the per centum to be added to or deducted from the valuation of such statement, which shall be prima facie evidence of the regularity of all proceedings of the Board, resulting in the action which is the subject matter of the statement. [In effect April 3, 1880.]

Changes in section—repealed 1876, re-enacted 1880.

Prima facie evidence—defined, Code Civ. Proc. § 1833.

3696. Between the first and third Mondays in September, of each year, the Board must determine the rate of State tax to be levied and collected upon the assessed valuation of the property of the State, which, after allowing twelve per cent. for delinquencies in and costs of collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the Legislature for State purposes. The Board must immediately thereafter transmit to the Board of Supervisors and County Auditor of each county a statement of such rate, and upon its receipt the Clerk of said Board and County Auditor must each, in writing, notify the State Board of Equalization thereof. [In effect March 28, 1878.]

Section was previously amended—in 1874 and 1876.

Original section held unconstitutional—(under Const. Cal. 1849), in delegating legislative power, so far as it authorized State Board to fix the rate after allowing for delinquency in collection of taxes, and thus to increase the amount of the tax to be paid, 47 Cal. 652; previously held otherwise, 46 Cal. 476. Unconstitutionality of entire original section maintained, (also under Const. Cal. 1849), 53 Cal. 152.

3697. Every person served with a subpœna who fails or neglects, without just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the Board, or to perform the duties prescribed therein, forfeits to the State five hundred dollars, to be recovered by action in the name of the Board, which action may be commenced and tried in any county of the State.

3698. Whenever the State Board of Equalization is satisfied that the Assessor or a Deputy Assessor of any county has knowingly, fraudulently, or corruptly assessed any property

below its actual cash value, it must immediately inform the District Attorney of such county in writing of the facts that may have come to its knowledge, with a request that such Assessor or Deputy Assessor be prosecuted, and the District Attorney must at once comply with such request.

3699. The Clerk or any member of the Board may administer and certify oaths.

3700. The annual salary of each member of the Board, except the State Controller, is three thousand dollars, and the annual salary of the Clerk of the Board is eighteen hundred dollars, and each of said officers shall devote his entire time to the service of the State in performing the duties and acquiring the information required by this Act. [In effect April 3, 1880.]

3701. Repealed. [In effect April 1, 1876; See § 3703.]

3702. Each member of the Board is entitled to repayment of his actual expenses incurred by him while traveling in the discharge of his duties, not to exceed annually one thousand dollars each, the amount thereof to be audited and allowed by the Board of Examiners, and the State Controller is hereby authorized to draw his warrant for said amount, and the State Treasurer is authorized to pay the same. Upon requisition of the Board, the Secretary of State must assign a room in the State Capitol for the use of the same, where the Board must keep its office and transact all business, except as in its nature must be transacted elsewhere. The Secretary of State, upon requisition of the Board, must furnish the Board with furniture, fuel, lights, postage stamps, and stationery; and the Superintendent of Public Printing, upon like requisition, must execute all printing that may be required by the Board. [In effect April 3, 1880.]

3703. Sections three thousand six hundred and ninety-three, three thousand six hundred and ninety-five, three thousand seven hundred, three thousand seven hundred and one, three thousand seven hundred and three of the Political Code are hereby repealed. [In effect April 1, 1876.]

3704. If the Board of Supervisors of any county fails or refuses either:

1. To allow the Assessor to appoint a sufficient number of deputies to make the assessment; or,
2. To furnish the proper books or blanks for his use; or,
3. To furnish the Assessor necessary office room;

—Then the State Board of Equalization may, upon the application of the Assessor, make the allowance, or furnish the proper books, blanks, or office room; and all the expense incurred in carrying into effect the provisions of this section must, by the Secretary of the Board, be certified to the Controller, who must, in his next settlement with the County Treasurer of any such county, require such Treasurer to pay the amount out of any funds belonging to such county.

Assessors of certain counties to pay deputies — whether appointed by order of State Board of Equalization or local Boards of Supervisors, (in Siskiyou, Calaveras, Amador or Alpine counties,) Stats. 1874, p. 393.

3705. The State Board of Equalization may, by an order entered upon its minutes, and certified to the County Auditor of any county, extend, for not exceeding thirty days, the time fixed in this Title for the performance of any act.

CHAPTER V.

Levy of Taxes.

§ 3713. Rate of taxation. Amounts required for the several Funds.
§ 3714. Supervisors to regulate county rate of taxation.
§ 3715. When the Supervisors fail to levy such taxes, etc.
§ 3716. Tax to operate as a judgment or lien against property.
§ 3717. Tax on personal property a lien on real property.
§ 3718. Tax on real property and tax on improvements a lien upon both.
§ 3719. Levy of State school tax.

3713. The State Board of Equalization must, for State purposes, for the thirty-third and thirty-fourth fiscal years, fix such an ad valorem rate of taxation upon each one hundred dollars in value of taxable property of this State, as, after allowing twelve per cent. for delinquencies in and costs of collection of taxes, as provided in section three thousand six hundred and ninety-six of this Code, will raise, for the thirty-third fiscal year:

First—For the General Fund, two million one hundred and ninety thousand and eighty-four dollars.

Second—For the School Fund, one million three hundred thousand dollars.

Third—For the Interest and Sinking Fund, three hundred and fifteen thousand dollars.

And for the thirty-fourth fiscal year:

First—For the General Fund, one million four hundred and eighty-eight thousand seven hundred and thirty-five dollars.

Second—For the School Fund, one million three hundred thousand dollars.

Third—For the Interest and Sinking Fund, three hundred and ninety-eight thousand dollars. [In effect, May 12, 1881.]

3714. The Board of Supervisors of each county must, on the first Monday of October, fix the rate of county taxes, designating the number of cents on each hundred dollars of property levied, for each fund, and must levy the State and county taxes upon the taxable property of the county; *provided*, that it shall not be lawful for any Board of Supervisors of any county in the State to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied and collected in any one year, to pay the bonded indebtedness, or judgment arising therefrom, of this State, or of any county or municipality in this State. [In effect April 12, 1880.]

3715. The action of the State Board of Equalization, in fixing the rate of taxation for State purposes, is, in the absence of action by the Board of Supervisors, a valid levy of the rate so fixed, and imposes upon the Auditor, Tax Collector, and all other officers charged with the performance of any duties under the Revenue Law, the same obligations as if the Board of Supervisors had made the levy at the proper time.

Levy of taxes—under Act subsequently repealed, held enforceable, 44 Cal. 303. For twenty-fourth and twenty-fifth fiscal years, and provisions for enforcement thereof, Stats. 1874, p. 746; no costs recoverable where amount less than ten dollars, Stats. 1876, p. 286.

3716. Every tax has the effect of a judgment against the person, and every lien created by this Title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

Lien of tax—not divested (under similar Statutes) until payment, 22 Cal. 522; levy of tax creates judgment and lien, having force and effect of an execution, 7 Cal. 35; continues after change of county boundaries, 25 Cal. 38; dates from assessment, 43 Cal. 644.

3717. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after 12 o'clock M. of the first Monday in March in each year. [In effect March 22, 1880.]

Lien attaches—on first Monday in March, under Const. Cal. 1879.

3718. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

3719. The State Board of Equalization must levy, annually, at the time other State taxes are levied, a tax of such number of cents on each one hundred dollars value of taxable property in the State, as will produce a net sum equal to the amount reported to them by the Controller as being necessary to be raised by an ad valorem tax for school purposes; and the assessment and collection of said tax shall be performed in the same manner, and at the same time, as other State taxes are assessed and collected. [In effect March 13, 1874.]

CHAPTER VI.

Duties of the Auditor in Relation to Revenue.

§ 3727. Auditor to enter in assessment book total valuations of property and show acreage of county.
§ 3728. Auditor to prepare duplicate statement, showing what.
§ 3729. Statements transmitted to State Controller and Board of Equalization.
§ 3730. Auditor to generally follow directions of State Board of Equalization.
§ 3731. Auditor to compute and enter taxes and foot up totals.
§ 3732. Delivery of duplicate assessment book to Collector, and Auditor's affidavit.
§ 3733. Auditor to retain original assessment book.
§ 3734. Tax Collector charged with full amount of taxes levied.
§ 3735. Auditor to verify all statements made by him.
§ 3736. Transfer of assessment book from one Collector to another.
§ 3737. Penalty for Auditor's neglect of duty.
§ 3738. Dispensing with duplicate assessment book.

3727. The County Auditor, as soon as the assessment book is delivered to him by the Clerk of the Board of Supervisors, must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

3728. The Auditor must, on or before the third Monday in August of each year, prepare from the "assessment book" of such year, as corrected by the Board of Supervisors, duplicate statements, showing in separate columns:

1. The total value of all property.
2. The value of real estate.
3. The value of the improvements thereon.
4. The value of personal property, exclusive of money.
5. The amount of money.
6. The number of acres of land.

Duplicate assessment-book—Auditor's power in preparing, § 3732a.

3729. The Auditor must, as soon as such statements are prepared, transmit, by mail or express, one to the Controller of State and one to the State Board of Equalization.

3730. As soon as the Auditor receives from the State Board of Equalization a statement of the changes made by the Board in the assessment roll of the county, or in any assessment contained therein, he must make the correspond-

ing changes in the assessment roll, by entering the same in a column provided with a proper heading in the assessment book, counting any fractional sum, when more than fifty cents, as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fraction of a dollar; but he shall, in all cases, disregard any action of the Board of Supervisors which is prohibited by section three thousand six hundred and thirty-three of this Code. [In effect March 22, 1880.]

Change in any assessment contained therein—such alteration of individual assessment held beyond power of State Board of Equalization, in Wells, Fargo & Co. v. State Board of Equalization, September 18, 1880, 6 P. C. L. J. 358.

3731. The Auditor must then compute and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the State Board of Equalization. [In effect April 3, 1880.]

3732. On or before the fourth Monday of October, he must deliver a copy of the corrected assessment book, to be styled "duplicate assessment book," to the Tax Collector, with an affidavit attached thereto, and by him subscribed, as follows: "I, ——, Auditor of the County of ——, do swear that I received the assessment book of the taxable property of the county from the Clerk of the Board of Supervisors, with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the State Board of Equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes, and acreage, as required by law, and that the copy to which this affidavit is affixed is a full, true, and correct copy thereof, made in the manner prescribed by law." [In effect April 3, 1880.]

Duplicate assessment-book—Auditor in making, while following alterations made by Board of Supervisors, must disregard cancellation of assessment or other excess of authority, 44 Cal. 616.

3733. The original assessment book must remain in the office of the Auditor.

3734. On delivering the "duplicate assessment book" to the Tax Collector, the Auditor must charge the Tax Collector with the full amount of the taxes levied, and forthwith transmit by mail to the Controller of State a statement of the amount so charged.

3735. The Auditor must verify, by his affidavit attached thereto, all statements made by him under the provisions of this title.

3736. The Auditor, if the "duplicate assessment book" or the delinquent tax list is transferred from one Collector to another, must credit the one and charge the other with the amount then outstanding on the tax list.

3737. If the County Auditor fails or neglects to perform the duties prescribed by sections three thousand seven hundred and twenty-eight and three thousand seven hundred and twenty-nine of the Political Code, he shall forfeit to the State five hundred dollars, to be recovered by action in the name of the State Board of Equalization. [In effect March 24, 1874.]

3738. The Board of Supervisors of any county may, in their discretion, dispense with the making or use of any duplicate assessment book mentioned in any part of this Code; and in all cases where said duplicate assessment book is referred to, it shall be lawful to use and consider the original assessment book in all the requirements of every part of this Code referring to the same, and all affidavits, or other statements in reference to said duplicate assessment book, shall be substantially worded to conform to the use of the original assessment book. [In effect March 24 1874.]

CHAPTER VII.

Collection of Property Taxes.

§ 3746. Tax Collector to publish notice, specifying what.
§ 3747. Taxes in San Francisco and Los Angeles payable at Collector's office.
§ 3748. In other counties notice to specify time and place of payment.
§ 3749. Manner of publication of notice.
§ 3750. Tax Collector to note date of payment.
§ 3751. Receipt to be given.
§ 3752. Payment of taxes of decedents, how enforced.
§ 3753. Settlement of Collector with Auditor; when made; form of.
§ 3754. Liability of Tax Collector refusing or neglecting to settle.
§ 3755. Action against Collector for such refusal or neglect.
§ 3756. When taxes are delinquent, addition thereto of five per cent.
§ 3757. Certain times when taxes must not be received. (Repealed.)
§ 3758. Comparison of original and duplicate assessment books by Collector and Auditor.
§ 3759. When delinquent list must be completed.
§ 3760. All matters on assessment book, etc., to be set down in numerical or alphabetical order.
§ 3761. Credit to be given to Tax Collector on final settlement, etc.
§ 3762. Tax Collector charged with delinquent taxes and five per cent additional.
§ 3763. Statement to be transmitted to Controller by Auditor.
§ 3764. Publication of delinquent list; when made, and what to contain.
§ 3765. Notice of sale appended to delinquent list.
§ 3766. Manner of making publication.
§ 3767. Time and place of sale to be designated.
§ 3768. Sale, when and where to take place.
§ 3769. Copy of publication and affidavit to be filed with County Recorder and Clerk.
§ 3770. Additional sum collected to defray costs, etc.; disposition of same.
§ 3771. Manner of conducting sale.
§ 3772. Postponement.
§ 3773. Designation of portions to be sold. Purchase of least quantity or interest. Sale to State.
§ 3774. Resale when purchaser does not make payment on next day.
§ 3775. Bid of person once refusing to make payment not to be received.
§ 3776. Collector to give purchaser a duplicate certificate of sale.
§ 3777. Signature of certificates of sale, and disposition of copies.
§ 3778. Collector to enter in a book description of land sold, and other memoranda of certificate.
§ 3779. Lien of State, when vests in purchaser; how alone divested.
§ 3780. Time for redemption of property.
§ 3781. Redemption, in what money made; crediting amount and paying it over.
§ 3782. Treasurer's report of persons entitled to redemption, and amount due to each.
§ 3783. Recorder to file and enter certificate of sale.
§ 3784. When property is redeemed, Recorder to note it in book.
§ 3785. Collector's deed when property is not redeemed in time; charges for making and acknowledgment.

§ 3786. Recitals in deed primary evidence of what.
§ 3787. Deed conclusive evidence of what.
§ 3788. Title conveyed by deed. Deeds to State, record and effect of.
§ 3789. Assessment books, delinquent lists, etc., prima facie evidence of what.
§ 3790. Seizure and sale of personal property for taxes.
§ 3791. Manner of conducting sale, etc.
§ 3792. Sale must be made after notice.
§ 3793. Collector's charges and mileage for sale or seizure.
§ 3794. Title to such property vests in purchaser on payment, etc.
§ 3795. Disposition of excess of proceeds over taxes, percentage and costs.
§ 3796. Unsold portion to remain at risk of owner.
§ 3797. Comparison of delinquent list with unpaid assessments.
§ 3798. Oath administered to Tax Collector.
§ 3799. Final settlement of Collector with Auditor.
§ 3800. Collector's affidavit, indorsed on list.
§ 3801. Auditor's statement of unpaid taxes and Supervisors' cancellation of those deemed not collectable. (Repealed.)
§ 3802. Uncanceled taxes to be entered on assessment book of each succeeding year, until paid. (Repealed.)
§ 3803. Rate of interest on delinquent taxes.
§ 3804. Taxes, etc., illegally collected to be refunded.
§ 3805. When land assessed more than once.
§ 3806. Land irregularly assessed, etc., not to be sold.
§ 3807. What mistakes do not affect sale of property for taxes.
§ 3808. Collection of taxes from persons assessed, but removed to another county.
§ 3809. Evidence on trial of suit for such taxes.
§ 3810. Allowance and payment of expenses of such proceeding.
§ 3811. Protest against sale requisite where assessment void in part, to invalidate sale or grant thereunder.
§ 3812. Duty of Tax Collector on delivery of such protest.
§ 3813. Assessment of property purchased by State, and adjournment of sale thereof.
§ 3814. No sale of such land unless directed by State Board of Equalization.
§ 3815. Conditions of redemption of property sold to State.
§ 3816. Distribution of such redemption moneys. Accounts and report thereof. Record and report of such grants.

3746. Within ten days after the receipt of the "duplicate assessment book," the Tax Collector must publish a notice, specifying:

1. That taxes will be delinquent on the last Monday in December next thereafter, at six o'clock P.M., and that unless paid prior thereto five per cent. will be added to the amount thereof.

2. The time and place at which payment of taxes may be made. [In effect April 16, 1880.]

Tax Collector—power of Legislature to supersede, 36 Cal. 379; nature of office, and union with that of Sheriff, 14 Cal. 12, 13; Sheriff, but not Under-Sheriff, may act as, 30 Cal. 683; power to contract for publication of delinquent list, 14 Cal. 219; compensation of, 27 Cal. 465; salary of, 35 Cal. 133; fees of, 36 Cal. 620; 49 Cal. 248; embezzlement by, 31 Cal. 416; of San Joaquin County, unconstitutional Act concerning, 34 Cal. 470.

3747. In the City and County of San Francisco, and in the County of Los Angeles, the notice must specify the office

of the Collector as the place where taxes may be paid. [In effect March 14, 1878].

3748. In other counties the notice must specify a time and place within each township in the county when and where the Collector will attend to receive payment of taxes.

3749. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township.

3750. The Tax Collector must mark the date of the payment of any tax in the assessment book, opposite the name of the person paying.

3751. He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

Receipt—duty of Tax Collector to give (under similar Statute), 20 Cal. 318.

Similar Provisions—of Practice Act (embracing also provisions like those of § 3750) cited, 20 Cal. 349.

3752. The Superior Court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid. [In effect March 22, 1880.]

Undistributed or unpartitioned property of decedents—to whom assessed, § 3642.

3753. On the first Monday in each month the Tax Collector must settle with the Auditor for all moneys collected for the State or county, and pay the same to the County Treasurer, and on the same day must deliver to and file in the office of the Auditor a statement, under oath, showing:

1. An account of all his transactions and receipts since his last settlement;
2. That all money collected by him as Tax Collector has been paid.

Settlement by Tax Collector—must pursue Statute requiring percentage or collections to be turned into County Salary Fund, 49 Cal. 248.

All moneys collected—including protested taxes, must be paid to County Treasurer, 46 Cal. 522, 52 Cal. 199.

3754. A Tax Collector refusing or neglecting for a period of five days to make the payments and settlements required

in this title, is liable for the full amount of taxes charged upon the assessment roll.

Section cited—52 Cal. 200.

3755. The District Attorney must bring suit against the Tax Collector and his sureties for such amount, and in case of neglect, the Controller of State or the Board of Supervisors may require him to do so; and when the suit is commenced, no credit or allowance must be made to the Collector for the taxes outstanding.

Section cited—as well as provision of Penal Code § 425, in 52 Cal. 200.

3756. On the last Monday in December of each year, at six o'clock P.M., all unpaid taxes are delinquent, and thereafter the Tax Collector must collect for the use of the county an addition of five per cent. [In effect March 22, 1880.]

Percentage for delinquency—addition of, constitutional, 22 Cal. 370; recoverable with cost of advertising, 23 Cal. 181; not applicable to assessment for widening Kearny street, in San Francisco, 36 Cal. 67.

3757. Section three thousand seven hundred and fifty-seven of the Political Code is hereby repealed. [In effect December 23, 1873.]

3758. On the third Monday in January of each year, in each of the counties other than San Francisco, and on the first Monday in February of each year, in the City and County of San Francisco, the Tax Collector must attend at the office of the Auditor with the duplicate assessment book, and carefully compare the duplicate with the original assessment book, and every item marked "paid" in the former must be marked "paid" in the latter. [In effect January 15, 1876.]

3759. The Tax Collector must, at the time specified in the preceding section, deliver to the Auditor a complete "delinquent list" of all persons and property then owing taxes.

3760. In the list so delivered must be set down in numerical or alphabetical order, all matters and things contained in the assessment book, and relating to delinquent persons or property.

3761. The Auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the Tax Collector who acted under it therewith, and make a final settle-

ment with him of all taxes charged against him on the assessment book, and must require from him the Treasurer's receipt, or if the Treasurer is the Collector, require from him an immediate account for any existing deficiency.

Moneys derived from mortgage taxes—for years 1870 and 1871, to be paid to counties which levied the taxes, Stats. 1872, p. 762.

3762. After settlement with the Tax Collector, as prescribed in the preceding section, the Auditor must charge the Tax Collector then acting with the amount of taxes due on the delinquent tax list, with the five per cent. added thereto, and within three days thereafter deliver the list, duly certified, to such Tax Collector.

3763. Within ten days after the final settlement, the Auditor must transmit, by mail or express, a statement to the Controller of State, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

Delinquent taxes—Suits for, 16 Cal. 340; 19 Cal. 462; see Tax Suits generally, § 3808a; costs, fees and percentage in, 16 Cal. 333; 19 Cal. 422; complaint in, 16 Cal. 332; 19 Cal. 462; 20 Cal. 595; 23 Cal. 131; 25 Cal. 300; 35 Cal. 37; 48 Cal. 427, 431.

3764. On or before the first Monday in February of each year, the Tax Collector in each of the counties other than San Francisco, and on or before the first Monday in March of each year in the City and County of San Francisco the Tax Collector of said city and county must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes and costs due, opposite each name and description, with the taxes due on personal property added to taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person. The expense of the publication to be a charge against the county. [In effect January 22, 1878.]

Delinquent list—when objection that not properly published, not sustained, 16 Cal. 333; omission of property from, as published, is defect remediable by Legislature, 12 Cal. 565; demand for printing, 20 Cal. 594; contract for publishing, 14 Cal. 219; as evidence, see under Primary Evidence, § 3769a.

3765. The Tax Collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction.

Notice of sale—insufficient proof of, 5 Cal. 251.

3766. The publication must be made once a week for three successive weeks in some newspaper, or supplement thereto,

published in the county, and the publication must be contracted for with the lowest bidder, and after ten days' public notice that such will be let. The bidding must be by sealed proposals. If there is no newspaper published in the county, then by posting a copy of the list in three public places in each township. [In effect April 1, 1878.]

Supplement—in which delinquent list published must be co-extensive in circulation with the paper itself, 52 Cal. 487.

3767. The publication must designate the time and place of sale.

Time and place of sale—time is that stated in the publication of the delinquent list, made in conformity with the Statute, 52 Cal. 487, at p. 489.

3768. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the County Court-house, or, if in the City and County of San Francisco, in or in front of the Tax Collector's office, for all State and county taxes; and for all other taxes, in front of the Tax Collector's offices in their respective towns, cities and local districts. [In effect March 16, 1876.]

3769. The Collector, as soon as he has made the publication required by Sections 3764, 3765, 3766, and 3767, must file with the County Recorder and County Clerk respectively, a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereto, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places in each of the townships, designating the township and places therein, which affidavit is primary evidence of all the facts stated therein.

Primary evidence--changed to prima facie in §§ 3788, 3789; delinquent list not prima facie evidence (under Act of 1850) of correctness of prior proceedings, 49 Cal. 642.

3770. The Collector must collect, in addition to the taxes due on the delinquent list and five per centum added thereto, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, one-half of which must go to the county and the other to the Collector in full for preparing the list.

Sale of land--for sum in excess of delinquent tax, and costs authorized by this section (by as much as the smallest legal fractional coin) is void, 51 Cal. 638.

3771. On the day fixed for the sale, or on some subsequent day to which he may have postponed it, of which he must give

notice, the Collector, between the hours of ten o'clock A. M. and three P. M., must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically or in the numerical order of lots and blocks until completed.

Tax sale—Effect of, on Statute of Limitations, 45 Cal. 560. General description of the tract sold, given at the time of the sale, makes the sale void for uncertainty, 23 Cal. 269. Party bound to pay the taxes, like one in possession, 13 Cal. 609; 27 Cal. 300; 39 Cal. 354; cannot gain an advantage in respect to the title by allowing the land to be sold for taxes and buying it in himself, either directly or indirectly, 13 Cal. 609; 25 Cal. 38; 33 Cal. 408; and see 36 Cal. 135, 322. Pre-requisites to validity of, authority for assessment is one of, 5 Cal. 249. Proceedings to acquire title by, strictly construed, 10 Cal. 632; 13 Cal. 609; 22 Cal. 131. Question as to sale of undivided interest in land, 42 Cal. 122. Title, none acquired by, where purchaser is himself the delinquent, 38 Cal. 217, or fraudulently colludes with the owner, 38 Cal. 632; see further, Party bound to pay the taxes; acquired by, for taxes of subsequent year, must prevail over that gained by sale for taxes of a previous year, 51 Cal. 15; to acquire, proceedings strictly construed, see under Proceedings, note *supra*. Void where tax illegally levied or property not liable for all the taxes for which it is sold, (but see § 3811) 19 Cal. 402; 36 Cal. 67; 46 Cal. 549.

3772. He may postpone the day of commencing the sale, or the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

Basis of section—Stats. 1857, p. 332.

3773. The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate, in writing, to the Tax Collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or the possessor does not, then the Collector may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes and costs due, including fifty cents to the Collector for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this chapter, on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith of the same, the whole amount of the property assessed shall be struck off to the people of the State as the purchaser, and the duplicate certificate delivered to the County Treasurer, and filed by him in his office. No charge shall be made for the duplicate certificate when the State is a purchaser; and in such case the Tax Collector shall make an entry, "Sold to the State," on the Duplicate Assessment Book opposite the tax, and he shall be credited with the amount thereof in his settlement, made pursuant to sections three thousand seven hundred and ninety-seven, three thousand seven hundred and ninety-eight, and three thousand seven

hundred and ninety-nine of this Code. [In effect March 24, 1874.]

Least quantity of the land—party taking, is the purchaser, hence deed to highest bidder void, 51 Cal. 193; 53 Cal. 216.

Undivided interest—under similar Statute, specific tract could not be sold in case of, 55 Cal. 132; redemption of, where whole tract sold, see under Redemption, § 3780*n*.

Costs due—includes accruing costs, and means all costs, 55 Cal. 132; but not fees for filing the certificate of sale, 23 Cal. 297.

3774. If the purchaser does not pay the taxes and costs before ten o'clock A. M. of the following day, the property, on the next sale day, before the regular sale, must be resold for the taxes and costs.

3775. The bid of any person refusing to make the payment for property purchased by him must not be received on the sale of any property advertised in the delinquent list of that year.

3776. After receiving the amount of the taxes and costs, the Collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

When known, name of person assessed must be stated—provision cited, 54 Cal. 523.

Certificate of sale—not set aside where regular on its face and purchaser has no notice of any outside matters, 46 Cal. 17.

3777. The certificate must be signed by the Collector, and one copy delivered to the purchaser, and the other filed in the office of the County Recorder.

Filed in office of County Recorder—at expense of purchaser, 23 Cal. 297.

3778. The Collector, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection without fee, during office hours when not in actual use.

3779. On filing the certificate with the County Recorder the lien of the State vests in the purchaser, and is only

divested by the payment to him, or to the County Treasurer for his use, of the purchase money and fifty per cent. thereon.

Section inapplicable—to a void sale and certificate, 53 Cal. 236.

Divesting lien—see Redemption, § 3780*n*.

3780. A redemption of the property sold may be made by the owner, or any party in interest, within twelve months from the date of the purchase. [In effect January 13, 1876.]

Redemption—right of, is statutory and subject to all the restrictions of the Statute, 47 Cal. 147; of an undivided interest, when whole tract sold, requires payment of whole amount of judgment for taxes, 23 Cal. 54, 594; 47 Cal. 147; judgment in action for, 47 Cal. 147; during period allowed for, purchaser at tax sale not entitled to rents and profits, 31 Cal. 269.

3781. Redemption must be made in gold or silver coin, and when made to the County Treasurer, he must credit the amount paid to the person named in the Collector's certificate, and pay it on demand to the person or his assignees. [In effect March 24, 1874.]

3782. In each report the Treasurer makes to the Supervisors he must name the persons entitled to redemption money, and the amount due to each.

3783. On receiving the certificate of sale the Recorder must file it, and make an entry in a book similar to that required of the Collector.

3784. On the presentation of the receipt of the person named in the certificate, or of the County Treasurer for his use, of the total amount of redemption money, the Recorder must mark the word "Redeemed," the date, and by whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

Presentation of receipt—not a part of the redemption, 51 Cal. 298.

3785. If the property is not redeemed within the time allowed by law for its redemption, the Collector, or his successor in office, must make to the purchaser or his assignee a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. In counties where no fee for making said deeds is provided by law, the Collector shall be entitled to receive from the purchaser three dollars for making such deed. No charge must be made by the Collector for the making of any such deed where the State is the purchaser; and the acknowledgment of all of said deeds, as provided in section thirty-

seven hundred and seventy-three, shall be taken by the County Clerk free of charge. [In effect February 15, 1876.]

Tax deed—as proof of title, 10 Cal. 632; 14 Cal. 133; cancellation of, when not ordered, 38 Cal. 679; must follow particular form prescribed by Statute, 54 Cal. 523, Hubbell v. Campbell, Jan. 17, 1881, 6 P. C. L. J. 1026; void, like sale (see § 3771*n.*), when tax illegal and void, 46 Cal. 549, or assessment not lawful, 30 Cal. 619; or property not listed and assessed, 29 Cal. 449; or no cash valuation thereof, 27 Cal. 50; or recitals contrary to Statute, 51 Cal. 193; held void on its face, 18 Cal. 303; 53 Cal. 152; not void because lots not separately assessed, or purchase money paid after sale, 46 Cal. 137; cloud on title, when not, 46 Cal. 553; 53 Cal. 152; latest is best, 46 Cal. 138; sufficient description of land in, 29 Cal. 326; not valid if made by Under-Sheriff, 30 Cal. 680; but see 22 Cal. 373; where payment delayed after sale, deed nevertheless conveys legal title, but subject to redemption, 51 Cal. 8; when requires additional proof, 27 Cal. 300; when not prima facie evidence of title, 36 Cal. 67; before made prima facie evidence of title, fulfillment of all pre-requisites to sale had to be clearly shown, 5 Cal. 250; is only prima facie evidence that no redemption effected, 51 Cal. 299.

Recitals—see § 3786*n.*

3786. The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is primary evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

Recitals in tax deed—must be proved where not made prima facie evidence, 51 Cal. 580; and where so made, other essential matters not inserted may be proved *aliunde*, 25 Cal. 48; and prima facie evidence furnished by, may be overthrown by showing that assessment illegal, 28 Cal. 72; conformably to certificate (§ 3776) must give the amount and year of the assessment, 53 Cal. 180; where void assessment shown by, deed is void, 54 Cal. 524; where shown that property not listed and valued by Assessor, fatal to deed, 10 Cal. 632; or that property not sold according to statute, 51 Cal. 193; when form becomes substance, 54 Cal. 523; minuteness of, 23 Cal. 287; 25 Cal. 38; not necessary, 32 Cal. 106.

Primary evidence—changed to prima facie in §§ 3788, 3789; before similar statute, pre-requisite to sale had to be clearly shown, 5 Cal. 250; requisite proof of title by tax deed, where such provision, 10 Cal. 632, and see 8 Cal. 388; burden of proof merely shifted, 13 Cal. 609, and see 23 Cal. 287.

Assessment legal (subd. 1)—if otherwise, deed no cloud on title, 46 Cal. 553.

Property not redeemed (subd. 6)—deed only prima facie evidence of non-redemption, 51 Cal. 299.

3787. Such deed, duly acknowledged or proved, is (except

as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the Assessor, inclusive, up to the execution of the deed.

Not conclusive—against party excepted by unrepealed section of Revenue Act of 1861, 50 Cal. 73; nor where actual fraud, 54 Cal. 169.

3788. The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except when the land is owned by the United States or this State, in which case it is prima facie evidence of the right of possession. Deeds to the State, of State lands sold for delinquent taxes, shall be recorded by the Recorders of the several counties as prescribed in section three thousand eight hundred and sixteen of this Code, and a copy of said deeds, duly certified by the County Recorder and acknowledged before the County Clerk, shall without delay be filed in the office of the Surveyor General, and thereupon the land shall again become subject to entry and sale, in the same manner and subject to the same conditions as apply to other State lands of like character, except that the former possessors of lands thus deeded to the State, their heirs or assigns, shall be preferred purchasers thereof for three months after the deeds are filed with the Surveyor General, as prescribed in this section, but the Surveyor General shall not permit an entry, nor make a sale of any lands thus deeded to the State, except upon the previous payment into the State Treasury, in addition to the price of said land as compared with the price fixed for other State lands of a like character, by the person or persons proposing to make the entry or purchase, of a sum equal to the delinquent taxes, costs, and penalties, by virtue whereof the State became a purchaser of the lands thus sought to be entered or purchased. The money thus paid into the State Treasury shall be distributed in the manner prescribed in section three thousand eight hundred and sixteen of this Code. [In effect March 9, 1876.]

Prima facie evidence—defined, see Code Civ. Proc., § 1833*a*.

3789. The Assessment Book, Duplicate Assessment Book, or Delinquent List, or a copy thereof certified by the County Auditor, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. [In effect March 24, 1874.)

Prima facie evidence—§ 3788*a*.

3790. The Tax Collector may, after the first Monday in February in each year, in each of the counties of this State,

except in the City and County of San Francisco, and may, after the first Monday in March in each year, in said City and County of San Francisco, collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent. [In effect January 15, 1876.]

3791. The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage, and costs.

3792. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

3793. For seizing or selling personal property, the Tax Collector may charge in each case the sum of three dollars, and the same mileage as is allowed by law to the Sheriff of the county.

3794. On payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

3795. All excess over the taxes, per cent., and costs of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the County Treasury, subject to the order of the owner, heirs or assigns.

3796. The unsold portion of any property may be left at the place of sale at the risk of the owner.

3797. The Tax Collector must, annually, on the third Monday of March, attend at the office of the Auditor with the delinquent list, and the Auditor must then carefully compare the list with the assessments of persons and property not marked "Paid" on the assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book.

3798. The Auditor must then administer to the Tax Collector an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment.

3799. The Auditor must then foot up the amount of taxes remaining unpaid, and credit the Tax Collector with the

amount, and have a final settlement with him; and the delinquent list must remain on file in the Auditor's office. In the City and County of San Francisco, the Auditor must charge the Collector with the amount due on such list, and must return to such Collector the copy of the assessment book. [In effect April 3, 1876.]

3800. At the time mentioned in Section 3797, the Collector must make an affidavit, indorsed on the list, that the taxes not marked "Paid" have not been paid, and that he has not been able to discover any property belonging to, or in possession of, the persons liable to pay the same whereof to collect them.

Section cited—46 Cal. 528.

3801. Section three thousand eight hundred and one of said Code is repealed. [In effect March 24, 1874.]

Uncollectable taxes—to be canceled by Board, refers not to those it may deem such, but to those referred to in affidavit required by § 3800, 46 Cal. 527.

3802. Section three thousand eight hundred and two of said Code is hereby repealed. [In effect April 3, 1876.]

Taxes not canceled—to be reëntered on assessment book, 46 Cal. 523.

3803. Interest at the rate of two per cent. per month must be collected on such delinquent taxes from the time they were first delinquent until paid.

Interest on such delinquent taxes—provision of section for, does not apply to sale made in the first instance, but only where all means of collection are finally exhausted, 53 Cal. 236.

3804. Any taxes, per centum, and costs erroneously or illegally collected, may by the order of the Board of Supervisors, be refunded by the County Treasurer.

3805. When the Collector discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due, and make return of the facts under affidavit to the County Auditor.

3806. If the Collector discovers before the sale that on account of irregular assessment, or of any other error, any land ought not to be sold, he must not offer the same for sale; and the Board of Supervisors must cause the Assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

3807. When land is sold for taxes correctly imposed as

the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

3808. If any person removes from one county to another, after being assessed on personal property, the Collector of the county in which he was assessed may employ an attorney to sue for and collect the same in the Assessor's name.

Tax suits generally—practice and pleadings, 23 Cal. 401, 421; 24 Cal. 61; 25 Cal. 300; 26 Cal. 668; 31 Cal. 196; 36 Cal. 375; 38 Cal. 393; 39 Cal. 439, 621; 43 Cal. 385, 399, 442; 44 Cal. 620, 623; 53 Cal. 386, and see Delinquent Taxes, § 3763*n*; see further, §§ 3899, 3900.

3809. On the trial a certified copy of the assessment, signed by the Auditor of the county where the same was made, with the affidavit of the Collector thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is primary evidence that such tax and the per centum is due, and entitles him to judgment, unless the defendant proves that the tax was paid.

Primary evidence—changed to prima facie, in §§ 3788, 3789.

3810. The Treasurer and Auditor must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do not exceed one-third of the amount of the tax collected.

3811. Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale shall not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, shall, not less than six days before the time at which the property is advertised to be sold, deliver to the Tax Collector a protest in writing, signed by the respective owner or agent, specifying the portion of the tax which he claims to be invalid, and the grounds upon which such claim is based. [In effect March 24, 1874.]

Section held inapplicable—where sale for a larger sum than the entire assessment and all lawful costs and charges, 51 Cal. 638; and where sale made before passage of section, 53 Cal. 235.

Payment under protest—see note on Tax, to § 3607.

3812. In case any owner of property advertised to be sold for delinquent taxes shall, at least six days before the time advertised for the sale to take place, deliver to the Tax Collector his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in

whole or in part—and if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded—it shall be the duty of the Tax Collector, either:

First—To sell the property assessed for the whole amount appearing upon the duplicate assessment book; or,

Second—Withdraw the property from sale, and report the case to the State Board of Equalization for its direction in the premises; and in such case the Board of Equalization may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the Collector to proceed with the sale. [In effect March 24, 1874.]

3813. In case property assessed for taxes is purchased by the State, pursuant to the provisions of section three thousand seven hundred and seventy-three of this Code, it shall be assessed the next year for taxes in the same manner as if it had not been so purchased. But it shall not be exposed for sale, and the sale thereof, under such assessment, shall be adjourned until the time of redemption, under the previous sale, shall have expired. [In effect March 24, 1874.]

3814. In case an assessment is made under the provisions of section three thousand eight hundred and thirteen of this Code, and the lands are not redeemed from a previous sale had under section three thousand seven hundred and seventy-three, as provided by law, no sale shall be had under the assessment authorized by said section three thousand eight hundred and thirteen, unless directed by the State Board of Equalization. [In effect March 24, 1874.]

3815. In case property is sold to the State as purchaser, pursuant to section three thousand seven hundred and seventy-three of this Code, and is subsequently assessed pursuant to section three thousand eight hundred and sixteen of this Code, no person shall be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees, and interest. [In effect March 24, 1874.]

Redemption of property sold to the State—see Stats. 1873, p. 951; 1880, p. 29 or 9. Same for taxes of 1874-75, see Stats. 1876, p. 687.

3816. Whenever property sold to the State, pursuant to the provisions of this chapter, shall be redeemed as herein provided, the moneys received on account of such redemption shall be distributed as follows: The original tax and the fifty per cent. paid in redemption shall be apportioned between the State and county in the same proportion that the State tax bears to the county tax; the five per cent. additional, and the money received for delinquent poll tax, shall be paid to the

county; the percentage allowed for the collection of the delinquent poll tax shall be paid to the Collector, and the costs to the parties entitled thereto. The County Treasurer shall keep an accurate account of all money paid in redemption of property sold to the State, and shall, on the first Monday of June, in each year, make a detailed report, verified by his affidavit, of each account, year for year, to the Controller of State, in such form as the Controller may desire. Whenever the State shall receive from the Tax Collector any grant of property so sold for taxes, the same shall be recorded, at the request of the County Treasurer, free of charge by the County Recorder, and shall be immediately reported by the County Treasurer to the State Board of Equalization. [In effect March 28, 1878.]

CHAPTER VIII.

Collection of Taxes by the Assessor on certain Personal Property.

§ 3820. When and by what officer taxes on movable personal property must be collected.
§ 3821. Assessor may collect such taxes by seizure and sale.
§ 3822. Mode of conducting such seizure and sale.
§ 3823. Rate of previous year governs amount of taxes collected.
§ 3824. Return of excess where lower rate fixed for year of collection.
§ 3825. Collection of deficiency where higher rate fixed for current year.
§ 3826. Monthly settlement of Assessor with Auditor.
§ 3827. Auditor to note in assessment book the amount of taxes paid by each person.
§ 3828. Auditor to note excesses or deficiencies in taxes paid.
§ 3829. Compensation of Assessors for collecting delinquent taxes on movable personal property.
§ 3830. Present incumbents to discharge duties of Assessor hereunder.

3820. The Assessor must collect the taxes on all personal property when, in his opinion, said taxes are NOT a lien upon real property sufficient to secure the payment of the taxes; *provided*, that in the City and County of San Francisco the Tax Collector shall collect such taxes at any time after the assessment. [In effect March 24, 1874.]

Tax on personal property a lien on realty—see § 3717.

3821. In the case provided for in the preceding section at the time of making the assessment, or at any time before the first Monday of July, the Assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed.

3822. The provisions of Sections 3791, 3792, 3793, 3794, 3795, and 3796 apply to such seizure and sale.

3823. The Assessor and Collector are governed, as to the amount of taxes to be by him collected on personal property, by the State and county rate of the previous year. [In effect March 24, 1874.]

3824. When the rate is fixed for the year in which such collection is made, then if a sum in excess of the rate has been collected, the excess must be repaid to the person from whom the collection was made, or to his assignee.

3825. If a sum less than the rate fixed has been collected, the deficiency must be collected as other taxes on personal property are collected.

3826. The Assessor, on the first Monday of each month, must make a settlement with the Auditor, and must pay into the County Treasury all moneys collected by him for such taxes during the preceding month, less the compensation allowed him for making such collection.

3827. The Auditor must, as soon as the "assessment book" for the year comes into his hands, note opposite the names of each person from whom taxes have been collected the amount thereof.

3828. As soon as the rate of taxation for the year is fixed, the Auditor must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency.

3829. For services rendered in the collection of taxes under section three thousand eight hundred and twenty, the Assessors of the several counties shall receive six per cent. on the amount by him collected; *provided*, that all fees or commissions collected, under this or any other Act, by the salaried officers, except in the collection of poll taxes in and for the City and County of San Francisco, shall be, by said officers, paid into the county treasury for the use of said city and county. [In effect March 28, 1878.]

3830. In every county in this State where any officer other than the Assessor is charged with the collection of taxes upon personal property not a lien upon real property, such officer must, until after the expiration of the term of the present incumbent, discharge the duties cast upon the Assessor under the provisions of this chapter. [In effect March 27, 1872.]

CHAPTER IX.

Poll Taxes.

§ 3839. Persons liable to poll tax.
§ 3840. Period for collection of poll taxes by Assessors.
§ 3841. Blank poll tax receipts must be ordered printed for County Treasurer.
§ 3842. Style of blank to be changed each year.
§ 3843. County Treasurer's duties in relation to poll tax blanks.
§ 3844. Auditor to sign blank receipts, and make entry of number signed.
§ 3845. Blanks to be delivered to and charged Assessor.
§ 3846. Poll tax may be collected by seizure and sale of personal property.
§ 3847. Mode of conducting such seizure and sale.
§ 3848. Debtors of persons owing poll tax to pay poll tax for such persons.
§ 3849. What officers are debtors under the preceding section.
§ 3850. Debtor may charge his creditor for such poll tax paid.
§ 3851. Receipt for poll tax delivered to purchaser of property sold for such tax, or to person paying the same.
§ 3852. Receipt only evidence of payment.
§ 3853. Monthly settlement of Assessor with Auditor for poll taxes, and payment into County Treasurer's office.
§ 3854. Assessor's yearly final settlement with Auditor and Treasurer for poll taxes.
§ 3855. Auditor to return receipts not used to the Treasurer.
§ 3856. Treasurer to credit Auditor with such receipts, and seal and keep them.
§ 3857. Assessor to keep a roll of persons liable for poll tax, and of payments and delinquents.
§ 3858. Proceedings of Auditor when such roll returned to him.
§ 3859. Assessor to note on assessment roll persons refusing to pay poll tax. (Repealed.)
§ 3860. Unpaid poll tax, with percentage, a lien on property of delinquent.
§ 3861. Proceeds of poll tax paid to County Treasurer for sole use of State School Fund.
§ 3862. Compensation allowed to Assessor and Collector for collecting such tax.

3839. Every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, insane persons, and Indians not taxed, must annually pay a poll tax of two dollars; *provided*, the same be paid between the first Monday in March and the first Monday in July; but if not paid prior to the first Monday in July, then it shall be three dollars; *provided further*, that nothing herein shall affect any laws imposing a greater poll tax upon inhabitants ineligible to citizenship. [In effect March 22, 1880.]

Section conforms—to Const. Cal. 1879, art. 13, § 12.

3840. Poll tax must be collected by the Assessors between the first Monday in March and the second Monday in January of the ensuing year. [In effect March 30, 1874.]

3841. The County Treasurer must, before the first Monday of March and the first Monday in July of each year, cause to be printed, respectively, of two and three dollars blank poll tax receipts, a sufficient number for the use of the Assessor. [In effect March 30, 1874.]

3842. The style of such blanks must be changed every year.

3843. The Treasurer must, before the first Monday in March of each year: First—Number and sign the two-dollar blanks, and before the first Monday in July, number and sign the three-dollar blanks. Second—At the time of signing make an entry of the whole number thereof, and of the first and last number placed thereon, in a book by him kept for that purpose. Third—Deliver all such blanks to the Auditor, and charge him therewith. [In effect March 30, 1874.]

3844. The Auditor upon the receipt thereof must sign the same, and make in a book to be kept by him for that purpose a similar entry to that prescribed in Subdivision 2 of the preceding section.

3845. He must, at any time after the first Monday in March and the first Monday in July, upon demand, deliver to the Assessor, in their order, the two and three-dollar blanks, and charge him therewith. [In effect March 30, 1874.]

Assessors—before amdt. 1874, read "County Assessors," but construed to apply to District Assessors, 46 Cal. 99.

3846. The Assessor must demand payment [of] poll tax of every person liable therefor, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person. [In effect March 30, 1874.]

Collection of poll taxes—or any other taxes but those on property, may be transferred by Legislature from one class of officers to another, 46 Cal. 99; repeal of Act concerning, 20 Cal. 677.

3847. The sale may be made after three hours verbal notice of time and place, and the provisions of sections thirty-seven hundred and ninety-one, thirty-seven hundred and ninety-three, thirty-seven hundred and ninety-four, thirty-seven hundred and ninety-five, and thirty-seven hundred and ninety-six, apply to such seizure and sale. [In effect March 30, 1874.]

3848. Every person indebted to one who neglects or refuses, after demand, to pay a poll tax, becomes liable therefor, and must pay the same for such other person after service upon him by the Collector of a notice in writing, stating the name of such person.

3849. Every officer authorized to draw the warrants for or to pay the salary or fees of any officer is the debtor of such officer within the meaning of the preceding section.

3850. Every person paying the poll tax of another may deduct the same from any indebtedness to such other person.

3851. The Assessor must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

3852. The receipt so delivered is the only evidence of payment.

3853. On the first Monday in each month the Assessor must make oath, before the Auditor, of the total amount of poll taxes collected by him during the last preceding month, and must, at the same time, settle with the Auditor for the same, and pay into the County Treasurer's office the total amount of poll taxes collected, less the percentum allowed for fees.

3854. On the first Monday in July the Assessor must return to the Auditor all two-dollar blank poll tax receipts received by him and not used, and pay to the Treasurer the total amount collected and not before paid in, less the amount of his fees, and the Auditor must deliver to him the three-dollar receipts; and on the second Monday in January of each year he must return to the Auditor all the three-dollar poll tax receipts received by him and not used, and must make final settlement with the Auditor and Treasurer therefor. [In effect March 30, 1874.]

3855. The Auditor must, as soon as the settlement is made, return to the Treasurer the receipts not used.

3856. The Treasurer must credit the Auditor with the receipts so returned, and must thereupon seal them up securely and deposit and keep them in his office.

3857. The Assessor must keep a roll of the names and local residence, or place of business, of all persons subject to

or liable for poll tax, and, if paid, date and amount of each payment, and, if not paid, cause of non-payment; *provided*, that no person shall be returned as delinquent on such roll unless a demand has been made upon him in person or through the post-office. [Approved April 1, 1878.]

3858. On the third Monday in January of each year the Assessor must deliver to the Auditor the roll so made up, and the Auditor must add to the total poll tax delinquent on such roll thirty-three and one-third per centum additional, and without delay deliver such list to the Tax Collector, and charge the Collector therewith. [Approved April 1, 1878.]

3859. Section three thousand eight hundred and fifty-nine is hereby repealed. [In effect March 30, 1874.]

3860. If any person, assessed for a property tax, has not paid to the Assessor the poll tax due from him, or for which he is liable, it, with thirty-three and one-third per cent. in addition thereto, constitutes a lien upon the property assessed to such person, to attach from the first Monday in March in each year, and must be collected in the same manner and at the same time as delinquent taxes are collected. [In effect March 30, 1874.]

3861. The proceeds of the poll tax must be paid to the County Treasurer, as provided by law, for the exclusive use of the State School Fund, and shall, by such Treasurer, be paid to the State as other moneys belonging to the State. [In effect March 22, 1880.]

3862. The Assessor, for services rendered in the collection of poll taxes, shall receive the sum of fifteen per cent.; and the Collector, for services rendered in the collection of poll taxes on the delinquent list (including the publication), shall receive the sum of twenty-five per cent. on all delinquent poll tax collected by him. [In effect March 28, 1878.]

CHAPTER X.

Settlements with the Controller and Payments into the State Treasury.

§ 3865. County Treasurers to settle with Controller for, and pay over to Treasurer, upon their order, all State moneys on hand.
§ 3866. Time when certain Treasurers shall make settlements. Deferred settlements.
§ 3867. Penalty imposed on Treasurers neglecting to settle.
§ 3868. Report of County Auditors to Controller.
§ 3869. Auditor to send report to State Controller and County Treasurer.
§ 3870. Penalty for failure of Auditor to make or transmit report.
§ 3871. Deductions by Controller on settlement.
§ 3872. Manner of making payments into State Treasury.
§ 3873. Controller's statement on Auditor's report and return of copy thereof.
§ 3874. County Treasurer to file with Auditor such returned copy.
§ 3875. Auditor to make certain entries.
§ 3876. Rate of mileage allowed Treasurer.
§ 3877. Controller may examine books of any revenue officer
§ 3878. Directing prosecution of delinquent revenue officers for fraudulent or other misconduct.
§ 3879. Controller may designate county in which such proceeding shall be had.
§ 3880. Special counsel may be employed; provision for expenses.

3865. The Treasurers of the respective counties must at any time, upon the order of the Controller and Treasurer of State, settle with the Controller, and pay over to the Treasurer all moneys in their possession belonging to the State.

Basis of section—Stats. 1870, p. 423.

Settlement with the Controller—allowance for extra services on, when not to be retained by County Treasurer, 51 Cal. 275.

3866. The Treasurers of the Counties of Alameda, Amador, Contra Costa, Calaveras, El Dorado, Nevada, Placer, Sierra, Solano, Yolo, San Francisco, Sacramento, San Joaquin, Santa Clara, Tuolumne, and Yuba, respectively, must, between the fifteenth and thirtieth days of January, April, July, and October, of each year, and the County Treasurers of the Counties of Humboldt, Del Norte, and Modoc must, between the fifteenth and thirtieth days of October and April, in each year, and the County Treasurers of other counties of this State must, between the fifteenth and thirtieth days of January and June, respectively, in each year, proceed to the State Capital and settle in full with the Controller of State, and pay over in cash to the Treasurer of State, all funds which have come into

their hands, as County Treasurers, before the close of business at the end of the previous month. If, in the opinion of the Controller of State, it appears from the report of the County Auditor that sufficient property tax has not been collected to make it for the interest of the State that a settlement should be made, the Controller shall defer the settlement until the next regular settlement. No mileage, fees, or commissions shall be allowed any officer for any deferred settlement; *provided*, that in case any settlement is so deferred that the County Auditor, in his next report to the Controller of State, shall include therein all moneys required to be reported since the date of his last report upon which a settlement was made. [In effect March 28, 1878.]

3867. Every County Treasurer who neglects or refuses to appear at the office of the Controller and Treasurer at the times specified in this chapter, and then and there to settle and make payment as required by this chapter, forfeits all fees, percentage, and mileage which would have otherwise been due him on such settlement; and the Controller is required to withhold all such fees, percentage, and mileage, and require the same to be paid into the Treasury for the use and benefit of the State.

Basis of section—Stats. 1870, p. 423.

3868. The Auditor of each county, between the first and tenth day of each month in which the Treasurer of his county if required to settle with the Controller, must make, in duplicate, and verify by his affidavit, a report to the Controller of State, in such form as the Controller may desire, showing specifically the amount due the State from each particular source of revenue at the close of business on the last day of the preceding month. [In effect March 28, 1878.]

3869. The Auditor must at once transmit by mail or express to the Controller one copy of the report, and must deliver the other copy to the Treasurer of his county.

3870. Every Auditor who fails to make and transmit the report required by this chapter, or any report or statement required by this title, forfeits all compensation which would be otherwise due him from the State; and the Controller is required to withhold such compensation.

3871. In the settlement the Controller must deduct the commissions and mileage allowed to the County Treasurer for his services, the State's portion of the repayments made under Section 3824, and any other amount due the county or the officers thereof.

Basis of section—Stats. 1870, p. 423.

3872. The manner of making payments into the State Treasury is prescribed by Sections 433, 434, 452, and 453 of this Code.

3873. The Controller must, after the Treasurer has made settlement and payment, enter upon each copy of the Auditor's report a statement showing:

1. The amount of money by the County Treasurer paid into the State Treasury;
2. The amount deducted for commissions and other allowances;

—And must then return one copy of the report to the County Treasurer.

Basis of section—Stats. 1870, p. 423.

3874. The County Treasurer must file with the Auditor of his county the copy returned to him by the Controller.

3875. The Auditor must then make the proper entries in his account with the Treasurer.

Basis of section—Stats. 1870, p. 423.

3876. The Controller must, in the settlement, allow the Treasurer for mileage at the rate of forty cents per mile from the county seat to the Capital; such mileage not to exceed at any settlement one hundred dollars.

3877. The Controller may examine the books of any officer charged with the collection and receipt of State taxes.

3878. If he believes any officer has been guilty of defrauding the State of revenue, or has neglected or refused to perform any duty relating to the revenue, he must direct the District Attorney or other counsel to prosecute the delinquent.

3879. When any law in relation to the revenue of the State has been so far violated as to require the prosecution of the offender for a criminal offense, or proceedings against him by civil action, the Controller may designate the county in which the prosecution or proceeding may be had.

3880. The Controller or Attorney General may employ other counsel than the District Attorney, and the expenses must be audited by the Board of Examiners and be paid out of the State Treasury.

CHAPTER XI.

Miscellaneous Provisions.

§ 3881. Defects, etc., in form of assessment books, may be supplied or corrected with written consent of People's Attorney.
§ 3882. Omissions, etc., in delinquent lists, how corrected.
§ 3883. Publication of corrected delinquent lists, etc.
§ 3884. Initial letters, abbreviations, and figures may be used in certain cases.
§ 3885. No assessment illegal on account of informality or delay of completion.
§ 3886. Fines, forfeitures and penalties paid into County Treasury.
§ 3887. Who liable for taxes on mortgaged or pledged personal or real estate property. (Repealed.)
§ 3888. Taxes payable only in gold or silver coin; exception.
§ 3889. Annual settlements of Assessors, District Attorneys, and Treasurers with Auditor.
§ 3890. Officers to perform only the duties pertaining to their own offices.
§ 3891. When this Title takes effect.
§ 3892. Saving clause.
§ 3893. Compensation of Assessor and Auditor for extra services.
§ 3894. Deputies for Assessors.
§ 3895. Compensation of Deputies.
§ 3896. State Board may dispense with duplicate assessment book.
§ 3897. Action to recover lands sold to State for taxes. Sale of property so recovered.
§ 3898. Disposition of proceeds of such sales. Expenses of recovery and sale.
§ 3899. When delinquent tax is three hundred dollars, after single offer of property for sale, suit may be brought.
§ 3900. Form of complaint in such cases. Attachment, judgment, evidence. Subsequent payment.

3881. Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the written consent of the District Attorney, be supplied or corrected by the Assessor at any time prior to the sale for delinquent taxes, and after the original assessment was made. In the City and County of San Francisco, the written consent of the City and County Attorney shall have the same force and effect as the written consent of the District Attorney. [In effect April 3, 1876.]

Assessment book—original, § 3650; duplicate, § 3732.

Revenue Validating Statutes—Time of sale for delinquent taxes in 1874 not to affect validity, Stats. 1874, p. 140. Assessments of 1872 and 1873, validated, Stats. 1874, p. 749. Proceedings of 1873 and 1874 legalized, Stats. 1874, p. 832. Rate and levy in San Diego confirmed, Stats. 1876, p. 360.

Defective and invalid assessments—of delinquent taxes. Legislature has power to legalize, 25 Cal. 300; 34 Cal. 432; curative act, when

ineffectual, 34 Cal. 571; proper method suggested, 34 Cal. 576; complaint in such cases may supply defects of assessment, 25 Cal. 305, but where it is itself substantially defective, cannot be legalized, 31 Cal. 196; remedied by confirmatory Act, 23 Cal. 57; Courts concluded by curative Acts, 23 Cal. 181.

Before this section—held that Auditor could not correct, in the duplicate assessment book, Assessor's omission of money signs before figures of valuation, 31 Cal. 132, and that such omission rendered tax deed void, 27 Cal. 50.

Mistake in assessment-roll—in description of land, when does not invalidate assessment, 25 Cal. 299.

3882. When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

3883. The publication must be made in the same manner as the original publication, and for not less than one week.

3884. In the assessment of land, advertisement, and sale thereof for taxes, initial letters, abbreviations, and figures may be used to designate the township, range, section, or parts of section.

3885. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

3886. The fines, forfeitures, and penalties incurred by a violation of any of the provisions of this Title must be paid into the Treasury for the use of the county where the person against whom the recovery is had resides.

3887. Repealed. [In effect March 22, 1880; see § 3680.]

3888. Taxes must be paid in legal coin of the United States. A tax levied for a special purpose may be paid in such funds as may be directed.

Similar provision—of Practice Act cited, 20 Cal. 349.

Legal tender notes—to be received at par for taxes, Stats. 1880, p. 28 or 8; previously held not receivable, 20 Cal. 350.

3889. Every Assessor, District Attorney, and County Treasurer must annually, on the first Monday of January, make a settlement with the County Auditor of all transactions connected with the revenue for the previous year.

3890. The Treasurer, Tax Collector, Assessor, Clerk of the Board of Supervisors, and each member of the Board must

separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this Title.

3891. With relation to the Acts passed at the present session of the Legislature, the provisions of this Title must, after this Title takes effect, be construed as though this Code had been passed and approved on the last day of the present session. But the provisions of this section do not apply to any Act expressly amendatory of either of the Codes, or putting into effect any part of either; nor to an Act approved March sixteenth, eighteen hundred and seventy-two, entitled an Act to put into immediate effect certain parts of the Political and Penal Codes; nor to an Act approved March twenty-second, eighteen hundred and seventy-two, entitled an Act to put into effect certain parts of the Codes and provide for their publication.

Superseding effect of section—on Revenue Acts, 46 Cal. 97.

3892. All taxes assessed before this Code takes effect must be collected under the laws in force at the time the assessment was made, and in the same manner as if this Code had not been passed.

3893. The Board of Supervisors of each county must make to the Assessor and Auditor thereof a reasonable allowance, not to exceed eight cents per folio, for making the statements required by Sections 3655 and 3728, and for making the duplicate assessment book mentioned in Section 3732 of THE POLITICAL CODE.

3894. The Board of Supervisors of each county in this State must allow the Assessor thereof such a number of deputies, to be appointed by him in addition to the number now fixed, or where no deputies are now allowed, so many deputies as will, in the judgment of the Board, enable the Assessor to complete the assessment within the time prescribed by law.

On failure of Board to allow deputies—State Board of Equalization may authorize their appointment, § 3704; but in certain counties (Siskiyou, Calaveras, Amador or Alpine). Assessor must in either case pay such deputies, Stats. 1874, p. 393.

Humboldt County—this and next section made applicable to, by special Act in Stats. 1876, p. 511.

3895. The Board must fix the compensation of the deputies so allowed; and such compensation must be paid out of the General Fund in the County Treasury. The compensation must not exceed five dollars per day for each deputy for the time actually engaged; nor must any allowance be made but

for work done between the first Monday in March and the first Monday in July of each year.

Compensation of deputies—in certain counties, see under first note to § 3894.

3896. The State Board of Equalization may, by an order entered upon its minutes, and certified to the County Auditor of any county in the State dispense with the duplicate assessment book in such county, in which event the original assessment book shall perform all the offices of such duplicate, and shall have like force and effect.

Duplicate assessment book—§ 3732.

3897. Whenever this State shall become the purchaser of property sold for taxes, and shall receive a grant of the same, the State Board of Equalization may direct the District Attorney of the county, or the Attorney General, to bring an action to recover possession of the same. In case of judgment for the recovery of the same, or of any part thereof, the Board of Equalization may order the property so recovered to be sold by the County Treasurer, under such regulations and on such terms as they may prescribe, and a grant from the people of the State, executed by the County Treasurer to the purchaser, reciting the facts necessary to authorize such sale and conveyance, shall convey all the interest of the State in such property, and be prima facie evidence of such facts. But no bid shall be received at such sale for less than twice the amount of all the taxes levied upon such property, and of all interest, costs, and expenses, up to the date of such sale. [In effect March 24, 1874.]

Property bought by State—for taxes, §3773.

Prima facie evidence—defined, Code Civ. Proc., § 1833.

3898. In case sales are made under the provisions of the next preceding section, the proceeds of such sale shall be paid into the County Treasury. The Treasurer shall retain and distribute to the respective Funds the portion belonging to the county, and shall pay the balance to the State Treasurer, who must place it in the General Fund. The attorney and counsel fees, costs, and expenses of the litigation for the recovery of the property, and of sales by the same, when audited by the Board of Examiners, must be paid out of the General Fund; *provided*, that the allowances in any one case shall not exceed the amount of said balance in such case. [In effect March 24, 1874.]

3899. The Controller may, at any time after a delinquent list has been delivered to a Collector, direct such Collector not

to proceed in the collection of any tax on said list, amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the Collector, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the Controller a certified copy of the entries upon the delinquent list relative to such tax; and the Tax Collector, or the Controller, in case the Tax Collector refuses or neglects for fifteen days after being directed to bring suit for collection by the Controller, may proceed, by civil action in the proper Court, and in the name of the people of the State of California, to collect such tax and costs. [In effect March 24, 1874.]

Tax suits—generally, § 3808*n.*; complaint in, § 3900 and note.

3900. In such action, a complaint in the following form is sufficient:

(Title of Court.)

The People of the State of California

vs.

(Naming the defendant.)

Plaintiff avers that the defendant is indebted to plaintiff in the sum of $——, State and county taxes for the fiscal year 18—, with five per cent. added for the non-payment of such taxes, and —— dollars, costs of collection, to date. Plaintiff demands judgment for said several sums, and prays that an attachment may issue in form as prescribed in section five hundred and forty of the Code of Civil Procedure.

(Signed by the Tax Collector, or Controller, or his attorney.)

On the filing of such complaint, the Clerk must issue the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil actions. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent. on the amount of the tax. In such action, the certified copy mentioned in the preceding section, made by the Collector and delivered to the Controller, is prima facie evidence that the person against whose property the tax was levied is indebted to the people of the State of California in the amount of such tax. In case of payment of any such taxes after suit as above mentioned shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the County Treasurer of the county in which such taxes are due, whereupon the Treasurer, after distributing to the several Funds of the county the portions belonging to it, and paying to the Controller or his attorney the portion received as attorney's fees, and other costs, must pay the re-

mainder to the State Treasurer at the times and in the manner prescribed by law for the payment of other State taxes. [In effect March 24, 1874.]

Form of complaint—in action for delinquent taxes, Stats. 1880, p. 402 or 136.

Attachment—see Code Civ. Proc., §§ 537–559.

Crimes against the Revenue—and property of this State, Penal Code §§ 424–443.

PART IV.

OF THE GOVERNMENT OF COUNTIES, CITIES, AND TOWNS.

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PART IV.

OF THE GOVERNMENT OF COUNTIES, CITIES, AND TOWNS.

TITLE I. OF COUNTIES.
II. THE GOVERNMENT OF COUNTIES.
III. THE GOVERNMENT OF CITIES.
IV. LIABILITY OF COUNTIES AND CITIES FOR INJURIES TO PROPERTY BY MOBS OR RIOTS.

TITLE I.

Of Counties.

CHAPTER I. COUNTY BOUNDARIES AND COUNTY SEATS.
II. GENERAL PROVISIONS RELATING TO COUNTIES.

CHAPTER I.

County Boundaries and County Seats.

§ 3901. County defined.
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§ 3909. Del Norte.
§ 3910. Klamath.
§ 3911. Shasta.
§ 3912. Lassen.
§ 3913. Siskiyou.
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§ 3916. Colusa
§ 3917. Lake.
§ 3918. Mendocino.
§ 3919. Trinity.
§ 3920. Plumas.
§ 3921. Sierra.
§ 3922. Butte.

§ 3923. Nevada.
§ 3924. Placer.
§ 3925. Yuba.
§ 3926 Sutter.
§ 3927. El Dorado.
§ 3928. Sacramento.
§ 3929. Yolo.
§ 3930. Amador.
§ 3931. Alpine.
§ 3932. San Joaquin.
§ 3933. Stanislaus.
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§ 3941. Kern.
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§ 3943. San Bernardino.
§ 3944. San Diego.
§ 3945. Los Angeles.
§ 3946. Santa Barbara.
§ 3947. San Luis Obispo.
§ 3948. Monterey.
§ 3949. Santa Cruz.
§ 3950. San Francisco.
§ 3951. San Mateo.
§ 3952. Santa Clara.
§ 3953. Alameda.
§ 3954. Contra Costa.
§ 3955. Sonoma.
§ 3956. Solano.
§ 3957. Marin.
§ 3958. Napa.

3901. A county is the largest political division of the State having corporate powers.

County—Bonds in aid of railroad, 18 Cal. 671; 30 Cal. 435. Governments, §§ 4000–4344; Legislature to provide a system of uniform, Const. Cal. 1879, art. 11, § 4; consolidation with city, *Id.* art. 11, § 7. Liability, § 4074*a*.; for jail guard, 29 Cal. 251. Limits; the several counties as existing, recognized as legal subdivisions of the State, Const. Cal. 1879, art. 11, § 1; boundaries, §§ 3909–3958. New, formation of, Const. Cal. 1879, art. 11, § 3; see § 3975 and notes. Office s, Const. Cal. 1879, art 11, § 5; see §§ 4101–4316. Power of Legislature over, 26 Cal. 641; 30 Cal. 435. Seat, removal of, Const. Cal. 1879, art. 11, § 4; see §§ 3976–3985. Township, organization for, Const. Cal. 1879, art. 11, § 4.

3902. This State is divided into counties, named, bounded and constituted as provided in this title.

Counties—as they now exist, recognized as legal subdivisions of this State, Const. Cal. 1879, art. 11, § 1.

Boundaries—and seats, §§ 3909–3958; disputed, § 3969 *et seq.*

3903. In describing courses the words "north," "south," "east," and "west," mean true courses, and refer to the true meridian unless otherwise declared.

3904. The words "northerly," "southerly," "easterly," and "westerly," mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects.

3905. The words "to," "on," "along," "with," or "by" a mountain or ridge, mean summit point, or summit line, unless otherwise expressed.

3906. The words "to," "by," "along," "with," "in," "up," or "down" a creek, river, slough, straight, or bay, mean the middle of the main channel thereof, unless otherwise expressed.

3907. The words "in," "to," or "from" the ocean shore mean a point three miles from shore. The words "along," "with," "by," or "on" the ocean shore, mean on a line parallel with and three miles from the shore.

3908. The mouth of a creek, river or slough which empties into another creek, river, or slough, is the point where the middle of the channels intersect.

DEL NORTE.

3909. Situated in the northwest corner of the State, beginning at a point in the Pacific Ocean on the forty-second parallel of north latitude, being southern line of Oregon; thence southerly by ocean shore, to a point one mile south of the mouth of the Klamath River, forming southwest corner; thence easterly, on a line parallel with Klamath River to a point one mile south of the mouth of Blue Creek; thence northeasterly to Siskiyou Mountains; thence easterly, following the ridge that divides the waters of Clear Creek from the waters of Dillon's Creek, to Klamath River, at a point equidistant from the mouths of said creeks; thence across Klamath River and east to the summit of Salmon Mountains, forming the southeast corner; thence northerly in a direct line to the head of the canyon on said river, about five miles above the mouth of Indian Creek; thence north, crossing Klamath River, to a point on the forty-second parallel of north latitude forming northeast corner; thence west to the place of beginning.

County seat—Crescent City.

Basis of Section—Stats. 1857, p. 35; 1851, p. 21.

KLAMATH.

3910. Beginning at southwest corner of Del Norte, as established in Section 3909: thence southerly, by ocean shore,

to a point west from the mouth of Mad River, forming southwest corner; thence east to a point in Trinity River, which forms common corner of Humboldt, Klamath, and Trinity; thence northeasterly to and along Scott's Mountain to its point of intersection with the ridge dividing the waters which flow into Scott's, Shasta, and Sacramento Rivers on the north from the waters which flow into Salmon and Klamath Rivers on the south, forming the common corner of Siskiyou, Klamath, and Trinity; thence northerly to and along the last mentioned ridge to the southeast corner of Del Norte, as established in Section 3909; thence westerly along the southern line of Del Norte to the place of beginning.

County seat—Orleans Bar.

Basis of Section—Stats. 1851, p. 180; 1855, p. 200; 1856, p. 32; 1857, p. 35.

Annexation of Klamath County—to Humboldt and Siskiyou counties; see Act in Stats. 1874, p. 755, and amendatory and supplementary Act in Stats. 1876, p. 603.

SHASTA.

3911. Beginning at the northern line of Tehama, at the head of Bloody Island, in Sacramento River; thence to and down the eastern channel to the mouth of Battle Creek; thence easterly, up Battle Creek, by the main channel, to the mouth of the middle fork, known as Digger Creek; thence up Digger Creek to its head; thence east to a point south of Black Butte Mountain, forming southeast corner; thence north, on western line of Lassen, to a rock mound, forming northeast corner, on southern line of Siskiyou; thence west, on said southern line, to Castle Rock, forming northwest corner; thence southerly along Trinity Mountain to the head of Bee Gum Creek, forming southwest corner; thence easterly down Bee Gum, Middle Fork, and Cottonwood Creeks to the western channel of Sacramento River; thence, by direct line, to the point of beginning.

County seat—Shasta City.

Basis of section—Stats. 1851, p. 177; 1852, p. 228, 235; 1856, p. 118; 1857, p. 25, 109; 1859, p. 259; 1864, p. 264.

LASSEN.

3912. Beginning at southwest corner, on the northern line of Sierra, as established in Section 3921, at a point on the summit of the ridge which crosses said line, and which divides Long Valley from Sierra Valley; thence northwesterly, following said ridge, to a point due south from the town of Susanville; thence westerly, along the ridge separating the waters which flow into the east branch of the north fork of Feather River, running through Indian Valley, from those which flow into the north fork of Feather River, running

through Mountain Meadows, to a point on said ridge south from the point where the old and present traveled road from the Big Meadows, via Hamilton's ranch, first crosses the said north fork; thence north, to a point east of the southeast corner of Shasta; thence west, along said extension line, to a point due south of Black Butte Mountain, being southeast corner of Shasta; thence north, to a point on southern line of Siskiyou marked by a rock mound, being northwest corner of Lassen and northeast corner of Shasta; thence east, along said line, to the eastern boundary of the State; thence south, along said State line, to the northeast corner of Sierra, as established in Section 3921; thence west, along the line of Sierra, to the place of beginning.

County seat—Susanville.

Basis of section—Stats. 1864, p. 264; 1865, p. 453.

Survey of boundary line—between Lassen and Siskiyou, Stats. 1871, p. 886.

SISKIYOU.

3913. Beginning at southwest corner, being common corner of Trinity, Klamath, and Siskiyou, as established in Section 3910; thence easterly, on northern line of Trinity, to northwest corner of Shasta, as established in Section 3911; thence east, on northern line of Shasta and Lassen, to western line of the State of Nevada; thence north, on the line of said State, to the southern line of the State of Oregon; thence west, on Oregon line, to the northeast corner of Del Norte, as established in Section 3909; thence southeasterly, on the eastern lines of Del Norte and Klamath, as established in Sections 3909 and 3910, to the place of beginning.

County seat—Yreka.

Basis of section—Stats. 1852, p. 233; 1861, p. 373.

Annexation of Klamath County—in part to Siskiyou, see § 3910a.

Creation of Modoc County—out of eastern part of Siskiyou, Stats. 1874, p. 124; supplemental Act, Stats. 1874, p. 517.

Survey of boundary line—of Siskiyou on the south and Lassen on the north, Stats. 1872, p. 886.

HUMBOLDT.

3914. Beginning at southwest corner of Klamath, as established in Section 3910; thence east, to common corner of Klamath, Humboldt, and Trinity, in Trinity River, as established by Section 3910; thence southeasterly, up Trinity River, to the mouth of its south fork; thence southeasterly, along the eastern side of said south fork, one hundred feet above high water mark, to the mouth of Grouse Creek; thence south, to a point on the fortieth degree of north latitude, being on northern line of Mendocino, and forming southeast

corner of Humboldt; thence west, on said line, to the Pacific Ocean; thence northerly, along the ocean shore, to the place of beginning.

County seat—Eureka.

Basis of section—Stats. 1853, p. 161; 1856, p. 37; 1862, p. 6.

Annexation of part of Klamath County—to Humboldt, see § 3910*n*.

TEHAMA.

3915. Beginning at the point of intersection of Sacramento River with south line of Township Twenty-three north, Mount Diablo base; thence west, on said line, being northern line of Colusa, to the summit of the Coast Range, being southwest corner; thence northerly, on said summit line, to the southwest corner of Shasta, as established in Section 3911; thence easterly, on the southern line of Shasta, as established in Section 3911, to the northwest corner of Plumas, being the point of intersection of southern line of Shasta with the summit line of the dividing ridge between the waters of Mill and Deer Creeks, tributaries of the Sacramento River, and Rice's and Warner's Creeks, tributaries of the north fork of Feather River, forming northeast corner of Tehama; thence southerly, along said summit line, to the north point of Butte County, it being the point where the northern road from Big Meadows to Butte Meadows, by Dye's house, crosses the said summit line; thence southwesterly, in a direct line, to the head of Rock Creek; thence southwesterly, down Rock Creek, to the south line of Township Twenty-four north, Mount Diablo base; thence west, on said line, to the Sacramento River; thence along said river to the place of beginning.

County seat—Red Bluff.

Basis of section—Stats. 1856, pp. 118, 222; 1857, pp. 25, 109, 134; 1859 p. 359.

COLUSA.

3916. Beginning at southeast corner, being northeast corner of Yolo, in Sacramento River, at its intersection with the south line of Township Thirteen north, Mount Diablo base; thence west, on said township line to the ridge dividing the waters flowing into Bear Creek and Stony Creek, from those flowing west into the north fork of Cache Creek and Clear Lake; thence northerly, along said ridge to the summit line of the Coast Range, being the western line of Lake, forming southwest corner of Colusa and northwest corner of Yolo; thence northerly on said summit and western boundary of Lake, through Hull's Mountain, to the Southwest corner of Tehama, as established in Section 3915; thence easterly on southern line of Tehama to initial point of Tehama, in Sacramento River; on south line of Township Twenty-three; thence down

said River to the southwest corner of the Llano Seco Grant; thence northeasterly along said grant line to its intersection with the northern boundary of Township Nineteen north; thence east to Butte Creek; thence down Butte Creek to Butte Slough; thence up Butte Slough to Sacramento River; thence down Sacramento River to the place of beginning.

County seat—Colusa.

Basis of section—Stats. 1851, p. 179; 1853, p. 193; 1856, pp. 118, 124.

LAKE.

3917. Beginning at the Summit of Mount Hull, near Mount St. John, on the western line of Colusa, and forming the northeast corner of Lake and east corner of Mendocino; thence southerly and circuitously, by the summit line of the Mayacmas Range, being the dividing ridge between the waters flowing into the Russian and Eel Rivers and those flowing easterly into Clear Lake, to the summit of Mount St. Helena; thence easterly along the line heretofore established, to the Buttes Canyon road; thence easterly, in a right line, to the most northern point of the Berryessa Rancho; thence easterly along the northern line of said rancho to the northeast corner thereof; thence east to the western line of Yolo County, as established in Section 3929; thence northerly, on the western line of Yolo and Colusa Counties, to the place of beginning.

County seat—Lakeport.

Basis of section—Stats. 1861, p. 569; 1864, pp. 97, 111; 1868, p. 269; 1870, p. 442.

Boundary line between Lake and Yolo Counties—Act to more clearly define, Stats. 1872, p. 903.

MENDOCINO.

3918. Beginning at the southwest corner of Humboldt, as established in Section 3914; thence southwesterly, by the ocean shore, to a point three miles west of Walhalla River; thence east to the mouth of said stream, and up the channel two miles; thence easterly in a direct line, on northern line of Sonoma, to the most northern and highest peak of Redwood Mountain; thence east to the western boundary of Lake, on the summit of the Mayacmas ridge; thence northerly, along the western and northern boundary of Lake, as established in Section 3917, to the northeast corner thereof; thence northerly, along the western boundaries of Colusa and Tehama, as established in Sections 3915 and 3916, to a point on the line of the fortieth parallel of north latitude, forming the northeast corner of Mendocino and the southeast corner of Trinity; thence west along said parallel, on southern line of Humboldt and Trinity, to the place of beginning.

County seat—Ukiah City.

Basis of section—Stats. 1851, p. 178; 1859, p. 98; 1864, p. 94, 334.

TRINITY.

3919. Beginning at the northeast corner of Mendocino, as established in Section 3918, on the summit line of the Coast Range; thence northerly on said range and the western line of Tehama and Shasta, to the point of intersection with the southern line of Siskiyou, being northeast corner of Trinity and northwest corner of Shasta; thence westerly, on the ridge dividing the waters flowing south and west into Trinity and Salmon Rivers from the waters flowing north and east into Scott's and Sacramento Rivers, to common corner of Klamath, Siskiyou, and Trinity, as established in Section 3910; thence southwesterly, on the line of Scott's Mountain, being the southern line of Klamath, to common corner of Trinity, Klamath, and Humboldt, as established in Section 3909; thence southerly, by the eastern line of Humboldt, to the fortieth parallel of latitude, being the northern line of Mendocino, forming southwest corner; thence east, to the place of beginning.

County seat—Weaverville.

Basis of section—Stats. 1851, p. 179; 1853, p 161; 1855, p. 200.

PLUMAS.

3920. Beginning on dividing ridge between the waters of Yuba and Feather Rivers, at common corner of Yuba, Butte, and Plumas, established by survey and map of Joseph Johnston, County Surveyor of Yuba County, July, eighteen hundred and fifty-seven, and indicated by a large spruce tree standing in front of the Buckeye House, marked "Corner of Plumas, Butte, and Yuba;" thence northeasterly, by direct line to the northwest corner of Sierra and the south corner of Plumas, in Slate Creek, at a point where the third course or terminating north and south line of survey of Keddie and Church, made June nineteenth, eighteen hundred and sixty-six, crosses said creek; thence northeasterly, up said creek, to the intersection of the first north and south line of said survey; thence north, on said line, to the initial point thereof, being the summit line of the ridge dividing the waters of Feather River from the waters of the Yuba River; thence easterly, on said summit line, and east to "The Falls," about one mile below the outlet of Gold Lake; thence east, to the summit of the ridge which divides Long Valley from Sierra Valley, this point forming the most southern southwest corner of Lassen, as established in Section 3912, also the southeast corner of Plumas; thence northwesterly, on the southwestern irregular line of Lassen, as established in Section 3912, to the southeast corner of Shasta, as established in Section 3911; thence west, on the southern line of Shasta, to the northeast

corner of Tehama, as established in Section 3915; thence southerly, on the ridge, being eastern line of Tehama and Butte, to the point of intersection of a line running northwesterly from the initial point, at the Buckeye House, in line with said initial point and the southern edge of Walker's Plains; thence on said line to the place of beginning.

County seat—Quincy.

Basis of section—Stats. 1854, p. 120; 1864, p. 264; 1866, p. 605; 1868, p. 462.

SIERRA.

3921. Beginning at the south corner of Plumas, in the center of Slate Creek, as established in section three thousand nine hundred and twenty; thence easterly on southern line of Plumas, as established in said section, to the range line between township twenty-one north, range thirteen east, and township twenty-one north, fourteen east, Mt. Diablo meridian; thence north on said range line, to the northwest corner of township twenty-one north, fourteen east, Mt. Diablo B. and M.; thence east on the line between townships twenty-one and twenty-two north, Mt. Diablo base, to the State line forming the northeast corner; thence south on said State line to the northeast corner of Nevada County, a point east of the source of South Fork of the Middle Yuba River; thence west to the source of and down the South Fork and Middle Yuba River to a point ten miles above the mouth of the latter; thence in a straight line northerly to a point on the North Fork of the Yuba River known as Cuteye Foster's Bar; down said river to the mouth of Big Canyon Creek, then up said creek four miles; thence in a straight line to the place of beginning.

County seat—Downieville. [In effect March 16, 1874.]

Before amendment 1874—altering northerly line, section founded on Stats. 1852, p. 230; 1863, p. 114; 1866, p. 223; 1868, p. 462.

BUTTE.

3922. Beginning at the northwest corner of Yuba, in Feather River, at the mouth of Honcut Creek; thence northeasterly up the Honcut Creek and the north or Natchez branch of the same, to its source, on line established by Surveyor General, on survey of Westcoatt and Henning, eighteen hundred and fifty-nine; thence to the summit line of the ridge dividing the waters of the Yuba and Feather Rivers; thence northeasterly up said ridge, on line of said survey, to the third station tree westerly from the Woodville House; thence in a right line, fifty chains more or less, to a station tree easterly from said house about twenty-six chains—said right line passing about three chains northerly of said house; thence northeast-

erly on said ridge and survey, to a point on line of said survey a little westerly from the village of Strawberry Valley—which point is two thousand feet distant westerly, in right line from point of highest altitude on line of said survey east, and within three hundred yards of the village of Strawberry Valley; thence to the common corner of Plumas, Butte, and Yuba, as established in section three thousand nine hundred and twenty; thence northwesterly on southwesterly line of Plumas, as established in said section, to the most eastern southeastern corner of Tehama, as established in section three thousand nine hundred and fifteen, forming also the north corner of Butte; thence southwesterly on the southeasterly line of Tehama to the southeast corner of Tehama, at point of intersection of Rock Creek and southern line of township twenty-four north, Mount Diablo base; thence west on said township line to the Sacramento River; thence down said river to the southwest corner of the Llano Seco grant; thence northeasterly along said grant line to its intersection with the northern boundary of township nineteen north; thence east to Watson's bridge, on Butte Creek; thence on Colusa County east line, down Butte Creek, to the northwest corner of Sutter County, as established in section three thousand nine hundred and twenty-six; thence east on north line of Sutter County to Feather River; thence down Feather River to place of beginning.

County seat—Oroville. [In effect March 7, 1874.]

Before amendment 1874—altering boundary line after striking the Sacramento, section founded on Stats. 1851, p. 177; 1853, p. 53; 1854, p. 129; 1856, pp. 118, 124, 222; 1857, pp. 25, 109, 120; 1859, p. 359; 1860, p. 115; 1861, p. 167.

NEVADA.

3923. Beginning at northwest corner, at a point in the main Yuba river at the mouth of Deer creek; thence up the main Yuba, to the mouth of the middle Yuba; thence up the latter, to the mouth of the south fork of the same; thence up the south fork, to its source; thence east, to the eastern line of the State, all on the southeastern and southern lines of Yuba and Sierra; thence south, along the State line, to the northeast corner of Placer, as established in Section 3924; thence westerly, on the northern line of Placer, as established in said section, to the source of Bear river; thence down Bear river to a point south of the junction of Deer creek and the main Yuba, forming southwest corner; thence north, to the place of beginning.

County seat—Nevada City.

Basis of section—Stats. 1851, p. 177; 1852, pp. 190, 191; 1856, p. 142.

PLACER.

3924. Beginning on southwest corner, at a point where the west line of Range Five East, Mount Diablo meridian, intersects the northern line of Sacramento county, as established in Section 3928; thence north, to the northwest corner of Township Twelve North, Range Five East; thence east, to the southwest corner of Section Thirty-four, Township Thirteen North, Range Five East; thence north, to Bear river; thence on southern line of Nevada, up said river, to its source; thence east, in a direct line, to the eastern line of the State of California, forming northeast corner; thence southerly, along said line; to the northeast corner of El Dorado, as established in Section 3927; thence westerly, on the northern lines of El Dorado and Sacramento, as established in Sections 3927 and 3928, to the place of beginning.

County seat—Auburn.

Basis of section—Stats. 1851, p. 176; 1866, p. 223; 1870, p. 294.

YUBA.

3925. Beginning at southwest corner, at junction of Feather and Bear Rivers; thence up Bear River, on the line of Sutter and Placer, to southwest corner of Nevada, as established in Section 3923; thence north, on Nevada line, to the junction of Deer Creek and main Yuba; thence up the main to the middle Yuba, and up the middle Yuba ten miles, to the southwest corner of Sierra, as established in Section 3921; thence in direct line northerly, and on line of Sierra, to Cut-eye Foster's Bar, on North Yuba River; thence down the river to the mouth of Big Canyon Creek; thence up said creek four miles; thence in direct line to south corner of Plumas and northwest corner of Sierra, in Slate Creek, as established in Sections 3920 and 3921; thence northwesterly in a direct line, to common corner of Plumas, Butte, and Yuba, in front of Buckeye House, as established in Section 3920; thence on southwestern line of Butte, as established in Westcoatt and Henning's survey and map, down the Honcut Creek, to its junction with Feather River; thence down Feather River, to the place of beginning.

County seat—Marysville.

Basis of section—Stats. 1851, p. 176; 1852, p. 230; 1860, p. 115; 1861, p. 167; 1866, p. 228.

SUTTER.

3926. Beginning at northwest corner of Sacramento County, as established in Section 3928; thence up the Sacramento River to the mouth of Butte Creek; thence up said creek to its intersection with the south line of Section Nine-

teen, Township Seventeen North, Range One East, Mount Diablo base and meridian; thence east, on section lines, to Feather River; thence down Feather River to the mouth of Bear River; thence up Bear River to northwest corner of Placer, as established in Section 3924; thence along the western boundary of Placer to the southwest corner thereof; thence westerly, along the northern boundary of Sacramento County, to the place of beginning.

County seat—Yuba City.

Basis of section—Stats. 1851, p. 176; 1852, p. 237; 1854, p. 26; 1856, p. 231; 1864, p. 301; 1866, p. 223; 1870, p. 294.

EL DORADO.

3927. Beginning on the west corner, at the junction of the North and South Forks of the American River; thence up the North Fork to the mouth of the Middle Fork; thence up the Middle Fork to the mouth of the South Fork of the Middle Fork at Junction Bar; thence up said last named fork to a point where the same is intersected by the Georgetown and Lake Bigler trail; thence along said trail to Sugar Pine Point, on the western shore of Lake Bigler; thence east to the State line; thence south and southeasterly, on the State line, to the northern corner of Alpine, being the point where the State line crosses the eastern summit line of the Sierra Nevada Mountains; thence southwesterly, along the western line of Alpine, as established in Section 3931, to the common corner of Alpine, Amador, and El Dorado, as established by said section; thence westerly, on the northern line of Amador, as established in Section 3930, and down the Cosumnes River and South Fork thereof to the eastern line of Sacramento, as established in Section 3928; thence northerly, by the eastern line of Sacramento, to the South Fork of the American River; thence down the latter to the place of beginning.

County seat—Placerville.

Basis of section—Stats. 1851, p. 176; 1857, p. 33; 1863, pp. 231, 349; 1864, p. 178.

SACRAMENTO.

3928. Beginning on the northern line of the county, at a point ten miles north of a point which was, on the thirtieth of March, eighteen hundred and fifty-seven, the mouth of the American River; thence easterly to the junction of the north and south forks of said river; thence up the principal channel of the south fork to a point one mile above Mormon Island, so as to include said island in Sacramento County, forming the northeast corner; thence southerly to a point on the Cosumnes River, eight miles above the house of William Daylor; thence south to Dry Creek, forming southeast corner;

thence down said Dry Creek to its entrance into the Mokelumne River; thence down the Mokelumne River to a point where said river divides into east and west branches; thence down the west branch to its junction with the east branch; thence down said river to its junction with the San Joaquin River; thence down the San Joaquin River to the mouth of the Sacramento River, at the head of Suisun Bay, forming southwest corner; thence up the Sacramento River to the mouth of Merritt Slough; thence up said slough to the mouth of Sutter Slough; thence up said Sutter Slough to the Sacramento River; thence up the Sacramento River to a point west of the place of beginning, forming the northeast corner of Sacramento County; thence east to the place of beginning. [Approved April 1, 1878.]

County seat—omitted in amdt. 1878.

Sacramento County—subject to provisions of Code respecting government of counties, 45 Cal. 682.

YOLO.

3929. Beginning on southeast corner, at the most easterly northeast corner of Solano, in Sutter Slough, at its intersection with the First Standard North; thence west on said standard line to west line of Range Three East, Mount Diablo meridian; thence north on said range line to the northeast corner of Township Seven North, Two East; thence west nine and seventy-two one hundredths chains to southeast corner of Township Eight, Two East; thence north on easterly line of said township to the old bed of Putah Creek; thence westerly up the old bed and main Putah Creek to a point on eastern line of Napa, in the canyon called Devil's Gate, where the highest ridge of mountains divides the waters of the Sacramento from Berryesa Valley, forming the most westerly of the southwest corners of Yolo and northwest corner of Solano; thence northerly along the highest ridge of said mountains to Cache Creek; thence east to the summit of the spur of the Coast Range which divides the waters flowing east into Bear Creek and Stony Creek, and those flowing west into the north fork of Cache Creek; thence northerly along the said dividing ridge, following the divide of said waters to the summit of the Coast Range of mountains on the easterly line of Napa and Lake and to the southwest corner of Colusa, as established in Section 3916; thence easterly on southern line of Colusa, as established in said section, to Sacramento River, forming the northeast corner at the point of intersection of the southern line of Township Thirteen North, Mount Diablo base; thence down said river to Sutter Slough; thence down said slough to the place of beginning.

County seat—Woodland.

Basis of section—Stats. 1851, p. 179; 1857, p. 108; 1866, p. 162; 1870, p. 294.

Boundary between Lake and Yolo—§ 3917*a*.

AMADOR.

3930. Beginning at southwest corner, in the Mokelumne River, on the eastern boundary of San Joaquin, as established in Section 3932; thence up said river to its junction with the north fork of the same; thence up the said north fork to the line of Alpine, being at a point south of common corner of Amador, Alpine, and El Dorado, which is in the center of the Amador and Nevada road, in front of Z. Kirkwood's house, as established in Section 3931; thence north by the line of Alpine to said common corner; thence westerly along said road to a point east of the source of the south fork of the south fork of the Cosumnes River; thence west to said source; thence down the south fork of the south fork and the south fork and the main Cosumnes River to the eastern line of Sacramento, as established in Section 3928; thence by eastern lines of Sacramento and San Joaquin to the place of beginning.

County seat—Jackson.

Basis of section—Stats. 1854, p. 46; 1855, pp. 113, 134; 1857, p. 251; 1863, p. 231; 1864, p. 178.

ALPINE.

3931. Beginning at north corner, at a point where the State line crosses the east summit of the Sierra Nevada Mountains, being the most easterly corner of El Dorado; thence southwesterly along said summit to a point two miles west of James Green's house, in Hope Valley, called Thompson's Peak; thence southwesterly, in a direct line, to a point on the Amador and Nevada turnpike road, in front of Z. Kirkwood's house, being common corner of Amador, Alpine, and El Dorado; thence south, across the north fork of the Mokelumne River, to the road leading from West Point, in Calaveras, to Big Tree road, near the Big Meadows; thence easterly along said West Point road to the Big Tree road; thence easterly in a direct line to where the Sonora trail strikes the middle fork of the Stanislaus River; thence easterly along said trail to the summit of the Sierra Nevada Mountains; thence northerly along said summit to the dividing ridge between West Walker and Carson Rivers; thence northeasterly along said dividing ridge to the State line, forming easterly corner of Alpine and northerly corner of Mono; thence northwest along said State line to the place of beginning.

County seat—Silver Mountain.

Basis of section—Stats. 1864, p. 178; 1866, p. 144; 1870, p. 20.

SAN JOAQUIN.

3932. Beginning at the junction of the San Joaquin and Mokelumne Rivers, on the line of Sacramento County; thence up the latter to the mouth of Dry Creek; thence up Dry Creek to the southeast corner of Sacramento, as established in Section 3928; thence southeasterly, to a point on Mokelumne River, being the point of beginning of survey of Boucher and Wallace of line between San Joaquin and Calaveras Counties, May, eighteen hundred and sixty-four; thence southeasterly, on the line of said survey, to the extreme northern corner of Stanislaus County, on north side of and near to Calaveras River, at a point on western line of Range Ten east, Mount Diablo meridian, as established by survey of George E. Drew, approved May, eighteen hundred and sixty, shown on map of said survey; thence south, on said range line, to Stanislaus River; thence down said river to its confluence with the San Joaquin; thence southwest, to the summit of the Coast Range, as shown on survey and map of Wallace and Stakes, May, eighteen hundred and sixty-eight, and forming the common corner of San Joaquin, Stanislaus, Santa Clara, and Alameda, as shown also on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence northwesterly, following the summit of the said Coast Range to a post near the middle of Section Thirty-two, Township Four south, Range four east; thence north to the southeast corner of Contra Costa, being a point on the west channel of the San Joaquin River, as laid down on Gibbe's map, at a bend where the said west channel, running downward, takes a general course north, which point is shown on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence down the said west channel to its confluence with the main river; thence down said river to the place of beginning.

County seat—Stockton.

Basis of section—Stats. 1851, p. 175; 1852, pp. 178, 180; 1860, p. 34.

STANISLAUS.

3933. Beginning at common corner of Stanislaus, Santa Clara, Alameda, and San Joaquin, on the summit of Mount Boardman, of the Mount Diablo Range, as shown on survey and map of Wallace and States, May, eighteen hundred and sixty-eight; thence southeasterly, on the summit line of said range, being eastern line of Santa Clara, to the northwest corner of Merced, forming the southwest corner of Stanislaus, as established by survey and map of A. J. Stakes, July, eighteen hundred and sixty-eight; thence northeasterly, on line as established by said last named survey, to the junction of the Merced and San Joaquin Rivers; thence down the San Joaquin seven miles; thence in a direct line a little north of

east to a monument established by survey of A. J. Stakes, being on the summit of the ridge between Merced and Stanislaus, and marking common corner of Tuolumne, Merced, Mariposa, and Stanislaus; thence northwesterly, in a direct line, and crossing the Stanislaus River, to monument established by survey and map of George E. Drew, May, eighteen hundred and sixty, on the north bank of said last named river; thence northwesterly, on line of said survey, to its intersection with western line of Range Ten east, Mount Diablo meridian, which point is marked by a monument establishing the north corner of Stanislaus County; thence south, on said range line, to Stanislaus River; thence down the latter to its mouth, in San Joaquin River; thence southwesterly, on line as surveyed and mapped by Wallace and Stakes, May, eighteen hundred and sixty-eight, to the place of beginning.

County seat—Modesto.

Basis of section—Stats. 1854, p. 40; 1855, p. 245; 1860, p. 34; 1870, p. 776.

MERCED.

3934. Beginning at northwest corner, being southwest corner of Stanislaus, as shown on survey and map of A. J. Stakes, eighteen hundred and sixty-eight; thence northeasterly, on southern line of Stanislaus, as described in Section 3933, to common corner of Tuolumne, Mariposa, Merced, and Stanislaus, as established in said section; thence southeasterly, by direct line, being western line of Mariposa, to Phillips' Ferry, on Merced River; thence southeasterly, on line of Mariposa, being line shown on "Map of Mariposa County," to Newton's Crossing on Chowchilla Creek, forming southeast corner; thence down the northern side and on high water mark, being on line of Fresno, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, to the eastern line of Monterey, on summit of Coast Range, forming southwest corner; thence northwesterly, by said summit and line of Monterey and Santa Clara, to the place of beginning.

County seat—Snelling.

Basis of section—Stats. 1855, p. 125; 1856, p. 183; 1866, p. 172; 1868, p. 56.

MONO.

3935. Beginning at north corner on State line, being east corner of Alpine, as established in Section 3931; thence southwesterly, on the easterly line of Alpine, as established in Section 3931, to the main summit of the Sierra Nevada Mountains; thence southerly, along said summit, on easterly line of Alpine, Tuolumne, and Fresno, to a point where the northern

line of Township Six south, Mount Diablo base, intersects said summit line, forming southwest corner; thence east, on said township line, being the northern line of Inyo, to the eastern line of the State, forming southeast corner; thence northwest; on the State line, to the place of beginning.

County seat—Bridgeport.

Basis of section—Stats. 1861, p. 235; 1864, pp. 30, 178; 1866, pp. 144, 335; 1870, pp. 20, 421.

CALAVERAS.

3936. Beginning at southern corner, at a point in the Stanislaus River where it intersects the eastern line of Stanislaus County, as established in Section 3933, being a point one mile north of Knight's Ferry, and being the western corner of Tuolumne County; thence up said river and north fork thereof, to the easterly line of Alpine, as established in Section 3931; thence northerly, on the line of Alpine, to the southeast corner of Amador, as established in Section 3930 and 3931; thence southwesterly, on the southern line of Amador, down the Mokelumne River, to the southwest corner of Amador, on eastern line of San Joaquin County; thence southerly and southeasterly, on line of San Joaquin and Stanislaus, as established in Sections 3932 and 3933, to the place of beginning.

County seat—San Andreas.

Basis of section—Stats. 1851, p. 175; 1854, p. 46; 1855, p. 134; 1861, p. 235; 1864, p. 178.

TUOLUMNE.

3937. Beginning at the most western corner, being the southern corner of Calaveras, as established in Section 3936, in Stanislaus River; thence southeasterly to common corner of Merced, Mariposa, Stanislaus, and Tuolumne, as established in Section 3933; thence easterly, on northern line of Mariposa, following summit line of the dividing ridge between Tuolumne and Merced Rivers, to Mount Lyell, as marked on Warren Holt's map, eighteen hundred and sixty-nine, and the summit of the Sierra Nevada Mountains, being on the western line of Mono and common corner of Tuolumne, Mariposa, and Fresno; thence northerly by the line of Mono, being the summit line of the Sierra Nevada Mountains, to the southern corner of Alpine, as established in Section 3931; thence northwesterly by the line of Alpine to the southeastern corner of Calaveras; thence westerly on the line of Calaveras and down the Stanislaus River, to the place of beginning.

County seat—Sonora.

Basis of section—Stats. 1851, p. 175; 1855, p. 245; 1859, p. 213; 1864, p. 178; 1866, p. 144; 1870, p. 20.

MARIPOSA.

3938. Beginning at the initial point of Fresno County, being where the Stockton Road to Millerton crosses the Chowchilla Creek, known as Newton's Crossing; thence north, forty-five degrees east, to the southwest corner of Section Eleven, Township Six south, Range Twenty east, Mount Diablo base and meridian; thence east, following section lines to main ridge between waters of Big Creek and Fresno River; thence easterly, on the main ridge which divides the waters of the Merced and San Joaquin Rivers, to the intersection of the same with the summit line of the Sierra Nevada Mountains and western line of Mono, the same point forming common corner of Tuolumne, Fresno, and Mariposa, as described in Section 3937; thence westerly, by the southern boundary of Tuolumne, to the southwest corner thereof, being common corner of Stanislaus, Merced, Tuolumne, and Mariposa; thence southeasterly, on western line of Merced, as established in Section 3934, to the place of beginning.

County seat—Mariposa.

Basis of section—Stats. 1851, p. 175; 1852, p. 240; 1855, p. 125; 1856, p. 183; 1861, p. 235; 1870, pp. 20, 449.

Boundary line of Mariposa and Fresno Counties—Act to better define, in Stats. 1872, p. 891; amd. by Stats. 1874, p. 100.

FRESNO.

3939. Beginning at southeast corner of Merced and southwest corner of Mariposa, being a point where the Stockton road to Millerton crosses the Chowchilla Creek, known as Newton's Crossing; thence westerly down said stream, on the north side, on line of high-water mark, being on southeastern line of Merced, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, and on line of Merced, to the eastern boundary line of Monterey, as described in Section 3948, being on summit of Coast Range; thence following said boundary line on said summit, in a southeasterly direction, to a point in the same, which point is south forty-five degrees west from the point on King's River where northern line of Township Sixteen South crosses the same, thence north, forty-five degrees east, to said point on King's River; thence east, along northern line of Township Sixteen South, to the dividing ridge between the waters of King's River and Kawdah River; thence easterly, on the said dividing ridge, to the summit of the Sierra Nevada, being the western line of Inyo; thence northwesterly, on the summit line and lines of Inyo and Mono, to Mount Lyell, the common corner of Tuolumne, Mariposa, and Fresno; thence westerly and southwesterly, on the southeasterly line of Mariposa, as established in Section 3938, to the place of beginning.

County seat—Millerton.

Basis of section—Stats. 1856, p. 183; 1861, p. 235; 1866, pp. 144, 355; 1870, pp. 20, 421, 449.

Boundary line of Mariposa and Fresno Counties—§ 3938a.

County line between Fresno and Tulare—Act to establish, Stats. 1876, p. 397, superseding like Act in Stats. 1874, p. 709.

County seat of Fresno—permanently located at town of Fresno. Stats. 1874, p. 913.

TULARE.

3940. Beginning at southwest corner, being common corner of Monterey, San Luis Obispo, Kern, and Tulare, and being the point where the line of the Sixth Standard South crosses the summit line of the Mount Diablo Range of mountains; thence east, on said standard, to the point of intersection with summit line of the Sierra Nevada Mountains, forming the southeast corner of Tulare and southwest corner of Inyo; thence northwesterly, on said summit, being on the western line of Inyo, to the east corner of Fresno, as established in Section 3939; thence on the southern line of Fresno to the eastern line of Monterey; thence southerly, on the line of Monterey, as established in Section 3948, to the place of beginning.

County seat—Visalia.

Basis of section—Stats. 1851, p. 173; 1852, p. 240; 1856, p. 183; 1864, p. 528; 1866, pp. 355, 796.

Boundary line between Tulare and Fresno Counties—see § 3939a.

KERN.

3941. Beginning at northwest corner, being common corner of San Luis Obispo, Monterey, Tulare, and Kern, as established in Section 3940; thence east, on Sixth Standard South, Mount Diablo base, to the northwest corner of San Bernardino, as established in Section 3943; thence south, on the westerly line of San Bernardino, to southern line of Township Nine North, San Bernardino base, forming southeast corner; thence west along said line and extension thereof to the summit of the Coast Range, being on the line of Santa Barbara, forming southwest corner; thence northwesterly, on said summit line, being eastern line of Santa Barbara and San Luis Obispo, to the place of beginning.

County seat—Havilah.

Basis of section—Stats. 1866, p. 796.

INYO.

3942. Beginning at the southeast corner of Tulare, as established in section 3940, being the point of intersection of Sixth Standard South, Mount Diablo base, with summit line of

Sierra Nevada Mountains; thence east, by said standard and extension thereof, to the eastern line of the State, forming southeast corner; thence northwesterly, on State line, to the southeast corner of Mono, as established in Section 3935; thence west on the southern line of Mono to the summit of the Sierra Nevada Mountains, being on the eastern line of Fresno, and forming the southwest corner of Mono and northwest corner of Inyo; thence southeasterly on said summit line to the place of beginning.

County seat—Independence.

Basis of section—Stats. 1866, p. 355; 1870, pp. 20, 421.

SAN BERNARDINO.

3943. Beginning at the southwest corner, a little northwesterly of Laguna Temecula, at a point on the northern line of San Diego, as established in Section 3944, where a south line drawn from the highest peak of the Sierra de Santiago intersects the said boundary line; thence northwesterly on the summit of said Sierra to the Santa Anna River, between the ranch of Sierra and the residence of Bernardo Yerba; thence across the Santa Anna River along the summit of the range of hills that lie between the Cayotes and Chino (leaving the ranchos Gutiveras and Ybana to the west of this line) to the southwest corner of the ranch San Jose; thence northerly along the eastern boundaries of said ranch and of San Antonio and the western and northern boundaries of Cucaimonga ranch to the ravine of Cucaimonga; thence northerly up said ravine to its source in the Coast Range; thence north, on the easterly line of Los Angeles and Kern, to the Sixth Standard South, Mount Diablo base, being the northeast corner of Kern and northwest corner of San Bernardino; thence east by said standard line and extension thereof to the State line; thence southeasterly on said State line to the Colorado River; thence down said river to the northern boundary line of San Diego County; thence westerly along the northern boundary line of San Diego County, as established in Section 3944, to the place of beginning.

County seat—San Bernardino.

Basis of section—Stats. 1853, p. 119; 1857, p. 165; 1866, pp. 355, 796; 1868, p. 604.

SAN DIEGO.

3944. Beginning at south corner of Los Angeles in the Pacific Ocean, opposite San Mateo Point; thence northerly along the western line of Rancho Santa Margarita to the southern line of Mission Viejo or La Paz; thence along the southern and eastern line of La Paz to a point two miles north of the south boundary line of Township Seven South,

Range Six West, San Bernardino base and meridian; thence northeasterly, to the southwest corner of San Jacinto Nuevo, in Township Four South, Range Four West; thence north along west boundary of said rancho to line between Townships Three and Fourth South; thence east to line between Ranges Two and Three West; thence north on range line to a point where a line parallel with the southern boundary between the United States and Mexico will just clear the Rancho San Jacinto Viejo; thence northeasterly along such parallel line to the Colorado River; thence down that river to its junction with the boundary line between the United States and Mexico; thence westerly, following that boundary line into the Pacific Ocean; thence northerly to place of beginning.

County seat—San Diego.

Basis of section—Stats. 1851, p. 172; 1866, p. 604.

LOS ANGELES.

3945. Beginning at southeast corner of Santa Barbara, in the Pacific Ocean, at a point on extension line of the northern boundary of the rancho called Malaga, western corner; thence northeasterly, so as to include said rancho, to the northwest corner of the rancho called Triumfo, running on northerly line of the same to the northeast corner thereof; thence to the summit of the ridge of hills called Santa Susanna; thence in a direct line northwesterly, to the southwest corner of Kern, as established in Section 3941, forming the northwest corner of Los Angeles; thence east, on southern line of Kern to the western line of San Bernardino, as established in Section 3943; thence southerly, on western line of San Bernardino to its point of intersection with northern line of San Diego, as established in said section; thence southwesterly, on San Diego line, as established in Section 3944, to northwest corner of San Diego, in Pacific Ocean; thence northwesterly, along ocean shore to place of beginning; including the Islands of Santa Catalina, San Clement, and the islands off the coast included in Los Angeles County.

County seat—Los Angeles.

Basis of section—Stats. 1851, p. 172; 1853, p. 119; 1856, p. 53; 1857, p. 165; 1868, p. 604.

SANTA BARBARA.

3946. Beginning at the western corner of Los Angeles, as established in section 3945; thence northerly, on westerly line of Los Angeles, as described in said section, to the northwest corner thereof, on the summit of the Coast Range, being also the southwest corner of Kern, as established in Section 3941; thence northwesterly, on the summit line, being also on western boundary of Kern, to a point of intersection with the

southern line of Township Ten North, San Bernardino base; thence west, on said township line, to the Santa Maria River; thence down said river, and down the creek which divides that part of Gaudalupe Rancho known as La Larga from that known as Oso Flacco, to a point in the Pacific Ocean opposite the mouth of said creek, forming northwest corner; thence southeasterly, by the ocean shore, to the place of beginning; including the Islands of Santa Barbara, San Nicolas, San Miguel, Santa Rosa, and Santa Cruz.

County seat—Santa Barbara.

Basis of section—Stats. 1851, p. 173; 1852, p. 218; 1854, p. 148; 1866, p. 796.

Creation of Ventura County—out of the eastern part of Santa Barbara County, Stats. 1872, p. 484.

SAN LUIS OBISPO.

3947. Beginning in Pacific Ocean, at northwestern corner of Santa Barbara, as established in Section 3946; thence easterly, on the northern line of Santa Barbara, up the Santa Maria River, to intersection of southern line of Township Ten North, San Bernardino base; thence east on said line to point on summit of Coast Range, forming the southeast corner, also northeast corner of Santa Barbara; thence northwesterly on summit line, being western line of Kern, to its intersection with Sixth Standard South, Mount Diablo base, being the common corner of Tulare, Kern, Monterey, and San Luis Obispo; thence west on said standard line and extension thereof to the Pacific Ocean; thence southerly along the shore to the place of beginning.

County seat—San Luis Obispo.

Basis of section—Stats. 1851, p. 173; 1854, p. 148; 1861, p. 349; 1863, p. 358; 1866, p. 796.

MONTEREY.

3948. Beginning in Pacific Ocean, at southwest corner of Santa Cruz, as established in Section 3949; thence west to the mouth of Pajaro River, on the Bay of Monterey; thence up said stream to its source, the small lake San Felipe; thence along the northern and western banks of said lake to the Creek San Felipe; thence east to the summit line of the Coast Range, forming northeastern corner; thence southeasterly along the summit of the Coast Range to the Sixth Standard South, Mount Diablo base, being the common corner of San Luis Obispo, Kern, Tulare, and Monterey; thence following the northern boundary of San Luis Obispo County, on said standard line and extension thereof, to the Pacific Ocean; thence along the shore northerly to the place of beginning.

County seat—Monterey.

Basis of section—Stats. 1851, p. 173; 1855, p. 125; 1856, p. 183; 1861, p. 349; 1863, p. 358; 1870, p. 411.

Creation of San Benito County—out of the eastern part of Monterey County. Stats. 1874, p. 95; supplementary act, Stats. 1874, p. 48, amd. by Stats. 1876, p. 177.

SANTA CRUZ

3949. Beginning at the south corner of San Mateo County, at a point in the Pacific Ocean south forty-five degrees west, three miles from the intersection of the east line of Rancho Punta del Ano Nueva with said ocean, forming western corner; thence north, forty-five degrees east, to said point of intersection; thence northerly, following the eastern line of said rancho, to its intersection with the south line of Township Eight South, Range Four West, Mount Diablo base and meridian; thence east to the southeast corner of said township; thence north to the northeast corner of Section Twenty-five of said township; thence east to the northeast corner of Section Twenty-six, Township Eight South, Range Three West; thence north to the summit of Santa Cruz Mountains, being western line of Santa Clara County; thence southeasterly along the summit of said mountains, on the western line of Santa Clara, to the Pajaro River, forming southeast corner, on northern line of Monterey; thence westerly along said river, on northern line of Monterey, to the Bay of Monterey, and three miles westerly into the ocean, forming southwest corner; thence northwesterly along the shore to the point of beginning.

County seat—Santa Cruz.

Basis of section—Stats. 1851, pp. 173, 174; 1868, p. 174.

SAN FRANCISCO (CITY AND COUNTY.)

3950. Beginning at the southwest corner, being northwest corner of San Mateo, in Pacific Ocean, on the extension of northern line of Township Three South, of Mount Diablo base; thence northerly along the Pacific Coast, to its point of intersection with westerly extension of low water line on northern side of the entrance to San Francisco Bay, being southwest corner of Marin and northwest corner of San Francisco; thence easterly, through Point Bonita and Point Caballo, to the most southeastern point of Angel Island, all on the line of Marin, as established in Section 3957; thence northerly, along the easterly line of Marin, to the northwest point of Golden Rock (also known as Red Rock), being a common corner of Marin, Contra Costa, and San Francisco; thence due southeast four and a half miles, more or less, to a point distant three statute miles from the natural high water mark on the eastern shore of San Francisco Bay, being a common corner of Contra Costa, Alameda, and San Francisco; thence

southeasterly, in a direct line, to a point three miles from said eastern shore, and on the line first named (considered as extending across said bay); and thence west along said first named line to the place of beginning. The islands known as the Farralones shall be attached to and be a part of said city and county.

See—Stats. 1851, p. 174.

SAN MATEO.

3951. Beginning at the southwest corner, being the west corner of Santa Cruz County, as established in section thirty-nine hundred and forty-nine; thence on northwestern line of Santa Cruz, as established in said section, to the southwestern line of Santa Clara, being the summit line of the Santa Cruz Mountains; thence northwesterly by said summit line to the source of San Francisquito Creek; thence down the south branch thereof, and down said creek to its mouth; thence to a point in the middle of San Francisco Bay, opposite said mouth, forming common corner of San Mateo, Santa Clara, and Alameda; thence in a direct line to a point in the center of ship channel in the Bay of San Francisco, west of and opposite to Dumbarton Point; thence in a direct line to the southeast corner of San Francisco City and County, as established in section thirty-nine hundred and fifty; thence due west, on the southern line of San Francisco City and County, to the southwest corner thereof; thence southerly along the ocean shore to the point of beginning. The eastern boundary of San Mateo County shall be the western boundary of Alameda County, in so far as the same borders on San Mateo County.

County seat—Redwood City. [In effect March 14, 1878.]

Before amendment 1878—reconstructing description of boundary, section based on Stats. 1856, p. 176; 1857, p. 222; 1868, p. 174.

SANTA CLARA.

3952. Beginning at a point opposite the mouth of San Francisquito Creek, being common corner of Alameda, San Mateo, and Santa Clara, as established in Section 3951; thence easterly, to a point at the head of a slough, which is an arm of the Bay of San Francisco, at its head, making into the main land in front of the Gegara Ranches; thence easterly, to a lone sycamore tree that stands in a ravine between the dwellings of Fluhencia and Valentine Gegara; thence easterly, up said ravine, to the top of the mountains, and as surveyed by Horace A. Higley, and shown on survey and map of Alameda County, eighteen hundred and fifty-seven; thence on a direct line easterly, to the common corner of San Joaquin, Stanislaus, Alameda, and Santa Clara, on the summit of the Coast Range, as established in Section 3932; thence southeasterly,

following the summit of the Coast Range, to the northeast corner of Monterey County, as established in Section 3948; thence westerly, following the northern boundary of Monterey County to the southeast corner of Santa Cruz County, as established in Section 3949; thence northwesterly, following the summit of the Santa Cruz Mountains, to the head of San Francisquito Creek; thence down said creek, to its mouth; thence in a direct line to the place of beginning.

County seat—San Jose.

Basis of section—Stats. 1851, p. 174; 1853, p. 56; 1854, p. 40; 1855, p. 125.

ALAMEDA.

3953. Beginning at the southwest corner, being the common corner of San Mateo, Santa Clara, and Alameda, as established in section three thousand nine hundred and fifty-one; thence easterly, on northerly line of Santa Clara, as established in section three thousand nine hundred and fifty-two, to common corner of San Joaquin, Stanislaus, Santa Clara, and Alameda, as established in section three thousand nine hundred and thirty-two; thence northwesterly, on the west line of San Joaquin County, to the slough known as the Pescadora (being the west channel or "Old San Joaquin River"); thence westerly, in a straight line, until it strikes the dividing ridge in the direction of the house of Joze Harban, in Amador Valley; thence westerly along said ridge, crossing the gulch one-half mile below Prince's Mill; thence to and running upon the dividing ridge between the Redwoods known as the San Antonio and Prince's Woods; thence along said ridge to the head of the gulch or creek (Cerreto Creek) that divides the ranches of the Peraltas from the San Pablo Ranches; thence down said gulch to its mouth; thence southwesterly to the common corner of San Francisco, Contra Costa, and Alameda, as established by section three thousand nine hundred and fifty; thence southerly, to a point in the Bay of San Francisco that would intersect a line parallel with the north line of the Central Pacific Railroad Company's wharf (as it now is), if extended westerly five hundred feet towards Yerba Buena Island; thence southeasterly, in a line parallel with the east line of the City and County of San Francisco (which is the line now dividing said city and county from the County of Alameda), to its intersection with the south line of said city and county, as established in section three thousand nine hundred and fifty; thence easterly along said last mentioned line to the northeast corner of San Mateo; and thence southeasterly along the eastern line of San Mateo to the place of beginning. Horace A. Higley's survey map of Alameda County, eighteen hundred and fifty-seven, are declared to contain a

more particular description of the line out of the Bay of San Francisco.

County seat—City of Oakland; *provided*, that nothing in this Act contained shall be construed to place "Yerba Buena Island," or any part thereof, outside the limits of the City and County of San Francisco, but the same shall be deemed to be within said city and county, and the westerly boundary line of the County of Alameda shall not come within two thousand and five hundred feet of any part of said island. [Approved March 30, 1874.]

Before amendment 1874—which changed portion after "down said gulch to its mouth," and added last paragraph, section founded on Stats. 1851, p. 174; 1852, p. 178; 1853, p. 56; 1856, p. 145; 1857, p. 222.

CONTRA COSTA.

3954. Beginning in Bay of San Francisco, at the northwest point of Red Rock, being the common corner of Marin, Contra Costa, and San Francisco, as established in Section 3950; thence up the Straits and Bay of San Pablo, on eastern boundary of Marin, to point of intersection with line bearing south twenty-six and one-half degrees east, and about six and one-quarter miles distant from southwest corner of Napa County, as established in Section 3958, forming common corner of Marin, Solano, Sonoma, and Contra Costa, as established in Section 3955; thence to the Straits of Carquinez; thence up said straits and Suisun Bay, to the mouth of the San Joaquin River; thence up said river, to the confluence of the west and main channels thereof, as laid down on Gibbe's map; thence up the said west channel, to a point about ten miles below Moore and Rhodes' ranch, at a bend where the said west channel, running downward, takes a general course north, the point being on the westerly line of San Joaquin County, and forming the northeast corner of Alameda and southeast corner of Contra Costa; thence on the northern line of Alameda, as laid down on Horace A. Higley's map, and as established in Section 3953, to the easterly line of San Francisco City and County, as established in Section 3950; thence due northwest, along said easterly line of San Francisco, four and one-half miles, more or less, to the place of beginning.

County seat—Martinez.

Basis of section—Stats. 1851, p. 174; 1852, p. 178; 1853, p. 56.

SONOMA.

3955. Beginning at northwest corner, at a point in the Pacific Ocean west of the mouth of Walhalla River; thence east to the mouth of said river, and up the main channel two miles; thence easterly, in a direct line, to the most northern and highest peak or summit of the Redwood Mountains, im-

mediately north of Cloverdale and Oat Valley; thence east to the western boundary of Lake County, on the summit of the Mayacmas Ridge, forming northeast corner; thence southerly along the Mayacmas Mountains, and on the western lines of Lake and Napa Counties, to the westerly branch of headwaters of Huichica Creek; thence westerly, on the line of Napa County, to the top of the main ridge that divides the Huichica Valley from the Sonoma Valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo Bay; thence southerly, to the center of Huichica Creek; thence down said creek to its mouth, which is the southwest corner of Napa; thence on the line of Solano south, twenty-six and one-half degrees east, about six and one-quarter miles distant from the mouth of Huichica Creek, to the point of intersection with the westerly line of Contra Costa County, forming common corner of Marin, Solano, Contra Costa, and Sonoma, as described in Section 3954; thence following the northern boundary of Marin westerly to the mouth of Petaluma Creek; thence up said creek to the mouth of San Antonio Creek; thence up said San Antonio Creek to its head; thence in a direct line to the head of the Estero Americano, on the line surveyed and established by William Mock, under the direction of the Surveyor General, in the year eighteen hundred and fifty-six; thence down said Estero Americano to its mouth; thence due west three miles to a point in the Pacific Ocean; thence northwesterly, by ocean shore, to the point of beginning.

County seat—Santa Rosa.

Basis of section—Stats. 1851, p. 178; 1852, p. 236; 1855, p. 150; 1861, p. 361; 1868, p. 42.

SOLANO.

3956. Beginning at southwest corner, in San Pablo Bay, at common corner of Contra Costa, Sonoma, Marin, and Solano, as established in Section 3954; thence north, twenty-six and one-half degrees west, about six and one-quarter miles on the western line of Sonoma, as established in Section 3955, to the southwest corner of Napa, at the mouth of Huichica Creek; thence east, on southern line of Napa, to the southeast corner thereof, as established in Section 3958; thence north, on line of Napa, as established in said section, to the First Standard north; thence east, along said standard, on said Napa line, to the summit of Vaca Mountains; thence northerly, on said summit and Napa line, to Devil's Gate, on Putah Creek, which point forms the northwest corner of Solano and southwest corner of Yolo; thence easterly, on line of Yolo, down said creek and old bed thereof, to its intersection with western line of Range Three east, Mount Diablo

meridian, forming the northeast corner of Solano, with exterior angle in Yolo; thence south, along line of Yolo, on said range line, two and seven-tenths miles, to the north line of Township Seven north, Mount Diablo base; thence east, nine and seventy-two one-hundredths chains, to northeast corner of said township; thence south, to the First Standard north, Mount Diablo base; thence east, on said standard line, to the center of Sutter Slough; thence down said slough to Merritt Slough, down Merritt Slough to the Sacramento River, down the Sacramento River about thirteen miles to Suisun Bay; thence down the bay, along the center of the main ship channel, in a westerly course, about eighteen miles, to the Straits of Carquinez; thence down the middle of said straits, and down San Pablo Bay, to the place of beginning. All these courses and lines being as shown by map and notes of William Wayne Fitch and E. H. Marshall, Surveyor and Deputy Surveyor of Solano County.

County seat—Fairfield.

Basis of section—Stats. 1851, p. 179; 1852, p. 236; 1853, p. 20; 1855, p. 77; 1857, p. 103; 1870, p. 294.

Solano County seat—located at Fairfield, Stats. 1874, p. 783.

MARIN.

3957. Beginning in the Pacific Ocean, at southwest corner of Sonoma; thence southeasterly along southern line of Sonoma, as established in Section 3955, to the mouth of Petaluma Creek; thence to common corner of Marin, Sonoma, Contra Costa, and Solano, in San Pablo Bay, as established in Section 3955; thence southerly along the western boundary of Contra Costa, in the Bay of San Pablo, to the middle of the Straits of San Pablo; thence southerly, in a direct line, to Invincible Rock, in the Bay of San Francisco, near the entrance of the Straits of San Pablo; thence, in a direct line, to northwestern point of Red Rock; thence southerly to the extreme southeasterly point of Angel Island; thence southwesterly to the extreme end of Point Cavallo at low water mark; thence on the line of low water mark along the northern shore of the bay to Point Bonita, and three miles into the Pacific Ocean, to the northwestern corner of San Francisco, as established in Section 3950; thence northwesterly by ocean shore to the place of beginning.

County seat—San Rafael.

Basis of section—Stats. 1851, p. 177; 1854, p. 121; 1860, p. 269; 1861, p. 351; 1868, p. 347.

NAPA.

3958. Beginning at southwestern corner, at a point in Huichica Creek where the said creek empties into San Pablo

Bay; thence east to the mountains dividing Napa Valley from Suisun Valley, forming southeastern corner; thence northerly along the summit line of said mountains to its intersection with the First Standard North, Mount Diablo base, marked by a rock monument erected by Ralph Norris; thence east along said standard line seven and three-fourths miles to Vaca Mountains, which divide the Vaca and Suisun Valleys; thence northerly along the main ridge of said Vaca Mountains to Putah Creek, at a point called the Devil's Gate; thence northerly across said creek to and along the mountains dividing Berryessa Valley from Sacramento Valley to the southeast corner of Lake County on the western line of Yolo; thence westerly along the southern line of Lake, as established in Section 3917, to its intersection with the eastern line of Sonoma; thence southeasterly on said line of Sonoma to the western branch of the headwaters of the Huichica Creek; thence westerly to the main ridge that divides the Huichica Valley from the Sonoma Valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo Bay; thence southerly to the center of the Huichica Creek; thence down said creek to its mouth, the place of beginning.

County seat—Napa City.

Basis of section—Stats. 1851, p. 178; 1852, p. 192; 1855, p. 77.

Northern boundary line of Napa County—adjoining Lake and Yolo counties, Act to define, Stats. 1872, p. 305.

CHAPTER II.

General Provisions Relating to Counties.

§ 3969. Surveys to definitely establish unsettled boundaries.
§ 3970. Reports to Surveyor-General on disagreement of Supervisors.
§ 3971. Surveyor-General to determine boundary, thereupon, or to order new surveys.
§ 3972. Approved surveys to be conclusive.
§ 3973. Previous surveys validated. Their force as evidence.
§ 3974. Apportionment of cost of survey. Provision for payment thereof.
§ 3975. Collection of old taxes when county is divided, or boundary altered.
§ 3976. Petition for change of county seat.
§ 3977. Supervisors to order election.
§ 3978. Notice of election, etc. (Repealed.)
§ 3979. Election, notice of; how held and conducted.
§ 3980. Voter to vote for place he prefers.
§ 3981. Notice of result.
§ 3982. Place chosen, to be county seat.
§ 3983. Statement of result deposited and notice transmitted.
§ 3984. No second election to be held within four years.
§ 3985. Subsequent removal of county seat.

3969. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the Boards of Supervisors of such counties, or by a survey made by the Surveyor General, on application of the Board of Supervisors of any county affected thereby.

Boundary line of a county--reputation as proof of, 25 Cal. 554.

3970. If the first mode is adopted, and the Board of Supervisors do not agree upon and finally approve the survey, each Surveyor must make a report to the Surveyor General, with surveys, maps, notes, and explanations touching disputed points.

3971. Upon such reports the Surveyor General must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys establish such common boundaries and corners.

3972. All surveys finally approved under the provisions of this chapter are conclusive ascertainments of lines and corners included therein.

Conclusiveness of approved surveys—section followed as to boundary line between Sonoma and Napa counties, in Borel v. Boggs, December 28, 1880, 6 P. C. L. J. 972.

3973. All surveys and maps of boundary lines heretofore legally made and approved, are declared valid, and they are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this Code. [Approved March 30, in effect July 6, 1874.]

Prima facie evidence—defined, Code Civ. Proc. § 1833.

3974. The cost of making such surveys must be apportioned equally among the counties interested, and the Board of Supervisors must audit the same, and the amounts must be paid out of the General County Fund.

3975. When a county is divided or the boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.

Formation of new county—Const. Cal. 1879, art. 11, § 3. Mode and requisites of, 32 Cal. 140. Effect on election of officers, 6 Cal. 76, 84; 32 Cal. 140.

County divided—and new county created: Probate Court of old county retained its jurisdiction, 24 Cal. 182; liability between old and new counties for indebtedness, and legislative powers regarding, 26 Cal. 641; 28 Cal. 449; now see Const. Cal. 1879, art. 11, § 3.

Division of county—see Desty's Const. Cal. 308.

3976. Whenever the inhabitants of any county of this State desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they may present a petition to the Board of Supervisors of their county, praying such removal, and that an election be held to determine to what place such removal must be made.

Basis of section—Stats. 1850, p. 199; 1854, p. 198.

Removal of county seat—Mandamus to compel election for, not issued on application of elector who has no other interest in the matter, 45 Cal. 6; and will be denied when asked on the pleadings, if answer denies sufficiency of signatures to petition, 45 Cal. 395. Number of elections that may be held for, unlimited, after one where majority of votes cast for old county seat, 48 Cal. 158, 159; but now, only once in four years, by Const. Cal. 1879, art. 11, § 2. Petition for, must have requisite number of signatures, not transferred from another identical petition, 49 Cal. 565. Legislative power over, and its delegation, 5 Cal. 344; 8 Cal. 382. Contesting election for, 30 Cal. 325.

3977. If the petition is signed by qualified electors of the county, equal in number to at least three-fifths of all the votes

cast in the county at the last preceding general election, the Board must, at the next general election of county officers, submit the question of removal to the electors of the county. [In effect March 2, 1880.]

Before amendment 1880—proportion of signatures required was one-third instead of three-fifths, and there were provisions for time of ordering the election and for naming the day.

Signatures to the petition—denial in answer, that covered requisite proportion of qualified voters, prevents mandamus on pleadings, to compel election, 45 Cal. 395; where cut from another petition bearing identical heading, and pasted on to the one presented to make requisite number, Board has no authority to order election, 49 Cal. 565.

General election—question of removal to be submitted at, under Const. Cal. 1879, art. 11, § 2.

3978. Section thirty-nine hundred and seventy-eight of said Act is hereby repealed. [In effect March 2, 1880.]

3979. Notice of such election, clearly stating the object, shall be given, and the election must be held and conducted, and the returns made in all respects in the manner prescribed by law in regard to elections for county officers. [In effect March 2, 1880.]

Notice of election—spacial and different provision for, in repealed § 3978.

3980. In voting on the question, each elector must vote for the place in the county which he prefers as the seat of justice, plainly designating it in his ballot.

Basis of section—Stats. 1850, p. 199.

3981. When the returns have been received and compared, and the results ascertained by the Board, if two-thirds of all the legal votes cast by those voting on the proposition are in favor of any particular place, the Board must give notice of the result by posting notices thereof in all the election precincts in the county. [In effect March 2, 1880.]

Two-thirds of votes cast—required instead of majority, as before amdt. 1880, conforming to Const. Cal. 1879, art. 11, § 2.

Notice of result—given by publication also, before amdt. 1880.

3982. In the notice provided for in Section 3981, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice the place chosen is the county seat of the county.

Basis of section—Stats. 1850, p. 199; 1854, p. 198.

3983. Whenever any election has been held as provided for in the preceding sections of this chapter, the statement made by the Board of Supervisors, showing the result thereof,

must be deposited in the office of the County Clerk, and whenever the Board gives the notice prescribed by Section 3982 they must transmit a certified copy thereof to the Secretary of State.

Basis of section—Stats. 1850, p. 199.

3984. When the election has been held and two-thirds of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter. [In effect March 2, 1880.]

Within four years thereafter—conforms to Const. Cal. 1879; but before amdt. 1880, period was two years.

Section held inapplicable—where majority of votes cast for old county seat, and a second election or further elections held authorized, 48 Cal. 159; but now, a proposition of removal shall not be submitted in the same county more than once in four years, under Const. Cal. 1879, art. 11, § 2.

3985. When the county seat of a county has been once removed, by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by qualified electors of the county equal in number to at least three-fourths of all the votes cast at the next preceding general election; nor unless at such election, when ordered, two-thirds of all the votes cast are in favor of some other place as the county seat of the county; and such election, when so ordered, shall take place at the first general election held thereafter, nor must two elections to effect such removal be held within four years. [In effect February 3, 1876.]

Section held inapplicable—see note to § 3894.

Changes in section—by amdts. 1874 and 1876, altered proportion of signatures from one-third to three-fourths, deciding vote from majority to two-thirds, and limiting period from three to four years.

TITLE II.

The Government of Counties.

CHAPTER I. COUNTIES AS BODIES CORPORATE.
II. THE BOARD OF SUPERVISORS.
III. COUNTY OFFICERS.
IV. SALARIES AND FEES OF OFFICE.
V. OTHER COUNTY CHARGES.

CHAPTER I.

Counties as Bodies Corporate.

§ 4000. Every county a body corporate.
§ 4001. Powers, how exercised.
§ 4002. Name and designation.
§ 4003. Enumeration of powers.
§ 4004. Restriction on loaning credit.
§ 4005. Restriction on temporary loans.
§ 4006. Classification of counties.
§ 4007. Same, governed by new census.

4000. Every county is a body politic and corporate, and as such has the powers specified in this Code, or in special statutes, and such powers as are necessarily implied from those expressed.

Amended in 1880—but amendment of this and other sections declared unconstitutional, with rest of County Government Bill, (see under County Governments, note *infra*.,) in Leonard v. January, September 16, 1880. The amendment struck out the words "or in special statutes."

County—in general, § 3901*n*.

County governments—uniform system of, Legislature directed to provide, by Const. Cal. 1879, art. 11, § 4; Act to establish, amending this and various other sections of title, declared unconstitutional and void, in Leonard v. January, September 16, 1880; like provision in Const. Cal. 1849, directory merely, and measure of uniformity practicable, in discretion of Legislature, 33 Cal. 487; held not violated by Act for issuance of county bonds for road purposes, 50 Cal. 561. Sacramento County governed by Code system of, 45 Cal. 692. County government is part of State government, 5 Cal. 288. New counties can not be established without, 32 Cal. 140.

Every county is a body politic and corporate—county is a corporation, 15 Cal. 33, (*contra*, 5 Cal. 288,) or quasi-corporation, 6 Cal. 254; 21 Cal. 113; but not a municipal corporation, 45 Cal. 692. People of county are not a corporation, 15 Cal. 33; though in their quasi-corporate capacity

people of a county may waive compliance in unessential particulars with a statute passed for the benefit of the county. 30 Cal. 326, 343.

Powers—§ 4003; restrictions on, §§ 4004-4005; by whom exercised, § 4001.

4001. Its powers can only be exercised by the Board of Supervisors, or by agents and officers acting under their authority, or authority of law; *provided, however*, that whenever any Board of Supervisors shall, without authority of law, order any money paid as a salary, fees, or for other purposes, and such money shall have been actually paid, or whenever the County Clerk or County Auditor has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the Board of Supervisors, or by the law, and the same shall have been paid, the District Attorney of such county is hereby empowered, and it is hereby made his duty to institute suit in the name of the county, against such person or persons, to recover the money so paid, and twenty per cent. damage for the use thereof, and no order of the Board of Supervisors therefor shall be necessary in order to maintain such suit; *and, provided further*, that when the money has not been paid on such orders, it is hereby made the duty of the District Attorney of such county to commence suit, in the name of the county, for restraining the payment of the same; and no order of the Board of Supervisors therefor shall be necessary in order to maintain such suit. [In effect March 24, 1874.]

Officers or employes—county not liable for acts of, where appointed for public benefit, 21 Cal. 115.

4002. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

Names of counties—where given, § 3902.

Actions—see § 4003, subd. 1.

4003. It has power:

1. To sue and be sued;
2. To purchase and hold lands within its limits;
3. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers;
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;
5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by this Code or by special statutes.

Amendment 1880 declared unconstitutional—see § 4000*n*. It substituted, at end of subd. 5, word "law" for words "this Code or by special statutes."

SUBDIVISION 1. **Power to sue and be sued**—county possesses, 6 Cal. 254, 656, 8 Cal. 303, *contra*, 5 Cal. 288,) but not people of county, 15 Cal. 33. County may sue, in its own name, 27 Cal. 465; 30 Cal. 627, or may act as relator in mandamus proceedings, 26 Cal. 641. County may be sued, 6 Cal. 254; 7 Cal. 121; 8 Cal. 52; 10 Cal. 508, but no execution can issue against its property, 8 Cal. 52, nor can private property of an inhabitant thereof be levied upon under such writ, 10 Cal. 404, nor can it be held liable for an extra set of weights and measures, 13 Cal. 636.

SUBDIVISION 4. **Power to control its property**—county may assign warrant drawn in its favor by another county, so that holder may demand payment thereon, 10 Cal. 459.

4004. No county must in any manner loan or give its credit to or in aid of any person unless it is expressly authorized by law so to do.

Amendment 1880 declared unconstitutional—See § 4000*n*. It followed Const. Cal. 1879, art. 11, § 18. Section as given, based on Const. Cal. 1849, art. 11, § 10, and art. 4, § 37.

4005. No money must be borrowed on a temporary loan by any county except in anticipation of the taxes of the current fiscal year, and the same must always be made payable within eight months from the time of making the loan.

Act of 1880, repealing section, declared unconstitutional—see § 4000*n*.

4006. For purposes other than for roads and highways the counties of this State are classified as follows:

1. Those containing twenty thousand inhabitants or over constitute the first class;

2. Those containing eight thousand and under twenty thousand inhabitants constitute the second class; and,

3. Those containing less than eight thousand inhabitants constitute the third class.

Amendment 1880 declared unconstitutional—see § 4000*n*. It provided for classification into ten classes, for purposes of taxation.

Amador County—declared county of third class, see Stats. 1874, p. 443.

Humboldt County—declared county of second class, see Stats. 1876, p. 353.

4007. Whenever a new census is taken, the counties, on the first day of July next thereafter, are, by operation of law, classified under such census.

CHAPTER II.

The Board of Supervisors.

ARTICLE I. ORGANIZATION AND TERMS OF BOARD.
II. GENERAL PERMANENT POWERS.
III. OTHER POWERS AND RESTRICTIONS.

ARTICLE I.

ORGANIZATION AND TERMS OF THE BOARD.

§ 4022. Number of members of Board, in various classes of counties.
§ 4023. Member must be elector of district.
§ 4024. Term of office. (Repealed.)
§ 4025. Proceedings of Board when number of members increased or decreased.
§ 4026. Vacancy in Board, how filled.
§ 4027. Members, how classified for election. (Repealed.)
§ 4028. Chairman, permanent and temporary. Administration of oaths.
§ 4029. Clerk, and his compensation. Signature of records.
§ 4030. Duties of Clerk.
§ 4031. Books to be kept by the Board.
§ 4032. Regular meetings fixed. Other meetings.
§ 4033. Additional regular meetings may be fixed.
§ 4034. Special meetings, how called.
§ 4035. Meetings and records public.

4022. Each county must have a Board of Supervisors, consisting:

1. In counties of the first class, of seven members;
2. In counties of the second class, of five members;
3. In counties of the third class, of three members.

Unconstitutional amendment 1880—(see § 4000*a*.,) fixed numbers of various classes of counties ranked as for purposes of taxation (see § 4006*a*.)

Board of Supervisors—forms quasi-political corporation, but members have not judicial functions (*contra*, 40 Cal. 155; 41 Cal. 68), hence not liable to certiorari, 6 Cal. 679, but *contra*, see 16 Cal. 208; 18 Cal. 671; 42 Cal. 252; acts of legislative character by, not reviewable by certiorari, 52 Cal. 132. Legislature may constitutionally require to issue bonds for improvement of roads, 50 Cal. 561. Supervisor holding over after term, is usurper, 25 Cal. 117. Where made body politic and corporate by statute, county is, nevertheless, not a municipal corporation, 45 Cal. 692; cannot ratify invalid contract, 6 Cal. 531.

4023. Each member of a Board of Supervisors must be an elector of the district he represents.

Amendment 1880 declared unconstitutional—see § 4000*n*. It had an additional provision, requiring one year's continuance as elector, and forbidding election at large.

Elector—qualifications of, § 1083 and notes.

4024. Repealed. [In effect March 7, 1881.]

Section repealed in 1881—had been before ineffectually conformed to requirements of Const. Cal. 1879, by amdt. 1880, which was declared unconstitutional, see § 4000*n*. It was also held that election and term of Supervisors and other county officers, not altered by Const. Cal. 1879, but left to control of Legislature, in Barton v. Kalloch, September 28, 1880, 6 P. C. L. J. 338.

4025. If, under the classification, the number of Supervisors of any county is either increased or diminished, the Board of Supervisors must redistrict the county in o Supervisor districts, as nearly equal in population as may be, to correspond with the number of Supervisors to which it is, under the new classification, entitled. If the number is increased, at the first general election thereafter Supervisors must be elected for such new districts in which no Supervisors then acting reside; and if the number is decreased, no successors must be elected for Supervisors whose terms expire until the number is decreased to that to which the county is entitled.

Amendment 1880 declared unconstitutional—see § 4000*n*. It provided for election by districts, and re-districting, without regard to increase or decrease of numbers.

Basis of section—Stats. 1855, p. 51.

4026. Whenever a vacancy occurs in the Board of Supervisors, from a failure to elect or otherwise, the County Judge must fill the vacancy by appointing for the unexpired term some qualified elector of the district in which the vacancy occurs.

Amendment 1880 declared unconstitutional—see § 4000*n*. It provided that Superior Judges should fill vacancy caused by repeal of any special law.

County Judge—see § 4110*n*.

4027. Repealed. [In effect March 7, 1881.]

Section repealed in 1881—had been before ineffectually repealed by amdt. 1880, held unconstitutional and void; see § 4000*n*.

4028. The Chairman must preside at all meetings of the Board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as Chairman temporarily. Any member of the Board may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties.

Amendment 1880 held unconstitutional—see § 4000*n*. It provided that the Supervisor should elect the chairman, to preside as set forth in

present section; also, that any member of the Board could administer oaths to any person "when necessary in the performance of their official duties."

4029. The Clerk of the county is ex officio Clerk of the Board of Supervisors. The records must be signed by the Chairman and the Clerk. The Clerk must be paid such compensation as is provided by law, in full for all services as Clerk of the Board.

Amendment 1880 declared unconstitutional—see § 4000*n*. It substituted "County Clerk" for "Clerk of the County," in first sentence of section, inserted "and minutes," after "records" in second sentence, and omitted third sentence.

Basis of section—Stats. 1855, p. 52.

Records must be signed—by Chairman and Clerk of Board; effect of requirement, 48 Cal. 143; 52 Cal. 4.

4030. The Clerk of the Board must:

1. Record all the proceedings of the Board;
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county;
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
4. Sign all orders made and warrants issued by order of the Board for the payment of money, and when he is not also the County Auditor, certify the same to that officer;
5. Record the reports of the County Treasurer of the receipts and disbursements of the county;
6. Preserve and file all accounts acted upon by the Board;
7. Preserve and file all petitions and applications for franchises, and record the action of the Board thereon;
8. Record all orders levying taxes; and,
9. Perform all other duties required by law or any rule or order of the Board.

Basis of section—Stats. 1855, p. 52.

Signing records—see § 4029 and note.

4031. The Board must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.
2. An "Allowance Book," in which must be recorded all orders for the allowance of money from the County Treasury, to whom made, and on what account, dating, numbering and indexing the same through each year.
3. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads, road districts, and Overseers thereof, their reports and accounts.

4. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required.

5. A "Warrant Book," to be kept by the County Auditor, in which must be entered, in the order of drawing, all warrants drawn on the Treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

4032. The regular meetings of the Boards of Supervisors must be held at their respective county seats on the first Mondays in May, August, November, and February of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and other purposes, as are prescribed in this Code or provided for by the Board.

Basis of section—Stats. 1861, p. 511; 1863, p. 541.

4033. In the counties of the first and second classes additional regular meetings, not exceeding two in each year, may be provided for, fixed, and held for the transaction of business by an order duly entered of record, in which must be specified the character of business to be transacted at such additional regular meetings, and none other than that specified must be transacted. Notice of the order fixing such additional meetings must be published for four weeks, in a paper published in the county, before the ordinance is effective.

4034. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the Board, a special meeting may be ordered by a majority of the Board. The order must be entered of record, and five days notice thereof must, by the Clerk, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

Basis of section—and of next, Stats. 1855, p. 52.

4035. All meetings of the Board must be public, and the books, records, and accounts must be kept at the office of the Clerk, open at all times for public inspection free of charge.

ARTICLE II.

GENERAL PERMANENT POWERS.

§ 4046. General permanent powers.
§ 4047. Board empowered to direct attendance of Sheriff and to punish for contempt.
§ 4047. Contracts for printing, stationery and supplies, how made.
§ 4048. Funding outstanding indebtedness of counties. Form of bonds.
§ 4049. Custody, disposal and account of bonds.
§ 4050. Assessments for bond fund.
§ 4051. Redemption of bonds.
§ 4052. Proceedings on failure to levy tax.

4046. The Boards of Supervisors, in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law:

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe keeping, management, or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

2. To divide the counties into townships, school, road, and other districts required by law, change the same and create others, as convenience requires.

3. To establish, abolish, and change election precincts, and to appoint Inspectors and Judges of Election, canvass all election returns, declare the result, and issue certificates thereof.

4. To lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer, and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding three dollars, and an ad valorem tax not exceeding one-fifth of one per cent., or either of such levies, when both are not required, on all taxpayers and taxable property of the county.

6. To provide a farm in connection with the County Hospital, and make regulations for working the same.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, pre-

serve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by them for that purpose, and no more than the appraised value must be paid therefor.

9. To cause to be erected and furnished a Court House, Jail, Hospital, and such other public buildings as may be necessary.

10. To sell at public auction at the Court House door, after thirty days previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the County Treasury for the use of the county.

11. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

12. To examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the County Treasurer therefor, and provide for the issuing of the same.

13. To levy such tax annually on the taxable property of the county as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding one dollar on every one hundred dollars of value for any one year; and to levy such taxes as are required to be levied by special or local statutes.

14. To equalize the assessments.

15. To direct and control the prosecution and defense of all suits to which the county is a party.

16. To insure the county buildings in the name of and for the benefit of the county.

17. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges, ferries, wharves, chutes and piers.

18. To fix the compensation of all county officers not otherwise in this Code or by general or special law fixed, and provide for the payment of the same.

19. To fill by appointment all vacancies that may occur in county or township offices, except those of County Judge and Supervisor.

20. To adapt to the county the provisions in this Code for the preservation of the health of San Francisco or Sacramento, for such limited time as they may deem proper, and to provide for the expenses thereof.

21. To contract for the county printing, and provide books and stationery for county officers.

22. At the adjournment of each session of the Board to cause to be published in a newspaper or otherwise a fair statement of all their proceedings, and semi-annually a statement of the financial condition of the county.

23. To make regulations for the destruction of gophers, squirrels, other wild animals, and noxious weeds, and to levy a special tax of not exceeding three cents on each one hundred dollars of taxable property, wherewith to pay rewards therefor. To make regulations for the protection of game, fish, and shellfish, and for the prevention of injuries to sheep by dogs, and to tax dogs, and direct the application of the tax. When such regulations are made as provided in this section relating to game and fish, the laws of the State for the protection thereof are suspended in such county.

24. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business, as may be necessary.

25. To adopt a seal for their Board, a description and impression whereof must be filed by their Clerk in the offices of the County Clerk and Secretary of State.

26. To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

Amendment 1880 declared unconstitutional—see § 4000*n*. It struck out all after "per capita" in subd. 5; inserted proviso at end of subd. 9; added words "no longer required for public use" after words "belonging to the county" in subd. 10; reconstructed subd. 13; inserted after subd. 13, three new subdivisions authorizing funding of indebtedness, redemption of outstanding indebtedness, and prevention of trespassing of animals; reconstructed subd. 18; changed County Judge to Superior, in subd. 19; reconstructed subds. 20, 21, 22; omitted subd. 23; and added at end a new subdivision for police and sanitary regulations. See Stats. 1880, p. 530 or 96.

Powers of Board of Supervisors—are combination of executive, legislative and judicial, 8 Cal. 58; 13 Cal. 11. By transfer, 12 Cal. 50. Legislative right to delegate powers to Board, 33 Cal. 279. To fix water rates, Stats. 1881, p. 54. Not to order payment of warrants in violation of the provisions of the Statute, 11 Cal. 187. As to creating office and raising salaries in Sacramento County, under Consolidation Act of 1858, 16 Cal. 208. To pass ordinance against promiscuous dumping of rubbish, sustained, in ex parte Casinello, May 25, 1881. Of San Francisco, as to gaslight contract, S. F. Gaslight Co. v. Dunn, Feb. 7, 1881, 7 P. C. L. J. 96.

SUBDIVISION 1. **Basis of provision**—Stats. 1855, p. 54.

Official bonds—power to require new, 10 Cal. 344.

SUBDIVISION 3. **Provisions cited**—32 Cal. 4.

Election Returns—to canvass, and declare result, 30 Cal. 325-6. See also §§ 4064, 4065. When not compelled to canvass returns, 39 Cal. 8.

SUBDIVISION 4. **Roads**—laying out, effect when order void, 27 Cal. 643; judicial functions exercised in laying out, 40 Cal. 155; 42 Cal. 252; and see 46 Cal. 19; authority to lay out and maintain road in another county, 31 Cal. 487; power to change grade of streets in San Francisco, 43 Cal. 91; not to grant to an individual right to collect tolls on public

road, 30 Cal. 520; to change location of road, 18 Cal. 702; to extend and complete all main intercepting sewers, Stats. 1881, p. 77. (previous Act in Stats. 1880, p. 77, applied to Supervisors of any city and county having more than 100,000 inhabitants.)

SUBDIVISION 8. **Receive donations**—authorization to receive and dispose of gifts, etc., Stats. 1881, p. 2; donations of money to State or counties, etc., Treasurer to receive and place in designated fund, etc., Stats. 1880, p. 105 or 20.

Manage property—discretion to employ counsel to contest election of officers of railroad company in which county owns stock, 35 Cal. 664.

SUBDIVISION 9. **County Jail**—47 Cal. 489.

SUBDIVISION 11. **Settlement with County Treasurer**—not to be made without due notice, 11 Cal. 130.

SUBDIVISION 12. **Claims against county**—allowance by Board is conclusive, 18 Cal. 144; 65 Cal. 373; unless beyond their jurisdiction to act upon, 20 Cal. 594-5. For expenses of volunteer companies, must be recognized by Board, 28 Cal. 228. Legally chargeable, must be, 11 Cal. 170; 46 Cal. 171; and not created by Board without authority, 10 Cal. 278. Generally, see §§ 4071-4075.

SUBDIVISION 13. **Current expenses**—no power to set apart revenue for, 6 Cal. 285; expression considered, 47 Cal. 510.

Levy taxes required by special or local statute—compelling to, 43 Cal. 353.

SUBDIVISION 14. **Equalize assessments**—see §§ 3672-3682.

SUBDIVISION 15. **County litigation**—When may employ other counsel instead of District Attorney, 44 Cal. 496.

Liability to suit—discussed, 18 Cal. 49.

SUBDIVISION 17. **Power to grant franchise**—or license, for ferry, 19 Cal. 150; 23 Cal. 302; 29 Cal. 453; premature certiorari for want of jurisdiction to license bridge, 3 Cal. 386; where Supervisors interested, § 4078.

Tolls—power to change, 46 Cal. 108.

SUBDIVISION 19—**Power to fill vacancies**—is by appointment, 32 Cal. 75, to be made on petition, § 4066; when improperly exercised, 12 Cal. 409.

SUBDIVISIONS 21, 22—**Publication of proceedings**—power over, see Maxwell v. Supervisors Stanislaus County, October 5, 1880, 6 P. C. L. J. 423.

SUBDIVISION 23. **Basis of provision**—Stats. 1870, p. 316

SUBDIVISION 26. **Other powers**—and restrictions, §§ 4064-4087.

Chief executive authority—of the county government, see Powers of Board of Supervisors, note *supra*.

4047. The Board of Supervisors shall have power to direct the Sheriff to attend in person, or by deputy, all the meetings of the Board, to preserve order, serve the notices or citations, as directed by the Board. And the Board shall have the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to Superior Courts, to require obedience to their citations and decorum in their meetings. [N. S. In effect March 18, 1874. The Unconstitutional Amendment in effect April 3, 1880, read County Courts.]

Attendance of witnesses—provisions concerning §§ 4067-4069.

Superior Courts—substituted by amdt. 1880 for County Courts, named in section as inserted by amdt. 1874.

4047. The Supervisors must contract for:

1. All county printing;
2. All books and stationery;
3. All supplies for county institutions.

And all contracts must be made with the lowest bidder, and after ten days' public notice that such contract will be let. The bidding must be by sealed proposals. [In effect April 1, 1878.]

Construction of section—held not to permit contract for any of the county printing, without the ten days notice required by section, 53 Cal. 394. Publication of proceedings, see note to § 4046, subds. 21, 22. Action in not awarding contract to lowest bidder, held not reviewable by certiorari, in Townsend v. Copeland, Jan. 21, 1881, 7 P. C. L. J. 15.

Section inserted—by amdt. 1874, and amd. (only verbally) in 1878.

4048. The Board of Supervisors of any county having an outstanding indebtedness on the first day of January, eighteen hundred and eighty, evidenced by bonds or warrants thereof, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the public interest, to fund and refund the same and issue bonds of the county therefor in sums not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent. per annum, payable semi-annually, which bonds shall be substantially in the following form: No. ——. The County of ——, in the State of California, for value received, promises to pay ——, or order, at the office of the Treasurer of said county, in ——, on the first day of ——, 18—, or at any time before that date, at the pleasure of the county, the sum of —— dollars, gold coin of the United States, with interest at the rate of —— per cent. per annum, payable at the office of said Treasurer, semi-annually, on the first days of —— and ——, in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the Board of Supervisors, under the provisions of chapter —— of the Political Code of California, and in conformity with a resolution of said Board, dated —— day of ——, 18—. Seal. In testimony whereof, the said county, by its Board of Supervisors, has caused this bond to be signed by the Chairman of the Board, and attested by the Auditor, with the county seal attached, this —— day of ——, 18—. ——, Chairman of Board of Supervisors. Attest: ——, Auditor. And the interest coupon shall be in the following form: $——. The Treasurer of —— County, California, will pay to the holder hereof, on the —— day of ——, 18—, at his office in ——, —— dollars, gold coin, for interest on County Bond No. ——, issued under provisions of chapter —— of the Political Code of California. ——, County Auditor. [In effect March 3, 1881.]

Funding indebtedness of county—validity and effect of Act for. 5 Cal 288. Act of April 16, 1880, adding the five sections 4048-4052 to Political Code, held a general law, and therefore constitutional, in Univ. Cal. v. Bernard, Jan. 28, 1881, 7 P. C. L. J. 88.

4049. Whenever bonds issued under this chapter shall be duly executed, numbered consecutively and sealed, they shall be delivered to the County Treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him, and the proceeds thereof, and he shall sell the same or exchange them under the direction of the Board of Supervisors on the best available terms for any legal indebtedness of the county outstanding on the first day of January, eighteen hundred and eighty, but in neither case for a less sum than the face value of the bonds, and all interest accrued on them at the date of such sale or exchange. And if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for bonds or warrants, or other legal evidences of county indebtedness, the Treasurer shall at once proceed to cancel the old bonds and such other evidences of indebtedness, by indorsing on the face thereof the amount for which they were received, the word "canceled," and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, the name and post office address of purchasers; and if exchanged, what evidences of indebtedness were received therefor; which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the Treasurer of such purchase, giving at the same time the number of the bond transferred and his post office address; and every transfer shall be noted on the record. The Treasurer shall also report, under oath, to the Board at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received by him on Bond Fund, and so entered by him on his books; but such bond shall not be sold or exchanged for any indebtedness of the county, except by the approval of the Board of Supervisors of said county. No sale shall be made of any such bonds, except to the highest bidder, after advertising bids for the purchase of the same for not less than three weeks in at least one newspaper published in the county; the right being reserved in such advertisement to reject any or all such bids. [In effect April 16, 1880.]

4050. The Board of Supervisors shall cause to be assessed and levied each year upon the taxable property of the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter accruing before the next annual levy, and such proportion of the principal that at the end of five years the sum raised from such levies shall equal at least twenty per cent. of the amount of bonds issued; at the end of nine years, at least forty per cent. of the amount; and at and before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the Bond Fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the Treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said Bond Fund. [In affect April 16, 1880.]

4051. Whenever the amount in the hands of the Treasurer belonging to the Bond Fund, after setting aside the sum required to pay the interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds, by advertising in any newspaper published in the county, not less than once a week for three successive weeks, and in some newspaper of general circulation published in the City of San Francisco, not less than once a week for three successive weeks, that he is prepared to pay the same, with all interest accrued thereon, and that if not presented for payment or redemption within forty days after the date of the publication of such notice, the interest on such bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. If said bonds are not so presented interest shall cease, and the amount due be set aside as specified in said advertisement. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice herein required shall be directed to the post-office address of the owner, as shown by the record kept in the Treasurer's office. [In effect April 16, 1880.]

4052. If the Board of Supervisors of any county which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds, or interest coupons, at maturity, and the same shall have been presented to the County Treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the State Controller, taking his receipt therefor, and the same shall be registered in the State Controller's office; and the State Board of Equalization shall, at their next session,

and at each annual equalization thereafter, add to the State tax to be levied in said county a sufficient rate to realize the amount of principal or interest past due, and to become due, prior to next levy, and the same shall be levied and collected as a part of the State tax, and paid into the State Treasury, and passed to the special credit of such county as bond tax, and shall be paid by warrants, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the State Controller, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county. [In effect April 16, 1880.]

ARTICLE III.

OTHER POWERS AND RESTRICTIONS.

§ 4064. Board to provide appliances for holding elections, and allow expenses.
§ 4065. Certificates issued, as Board of Canvassers.
§ 4066. Appointments to vacancies must be made on petition.
§ 4067. Power to require attendance of witnesses.
§ 4068. Examination of witnesses.
§ 4069. Officers and witnesses not to be prepaid.
§ 4070. When Board must not contract debts or allow further accounts.
§ 4071. Claims of officers. Opposition to claims against county.
§ 4072. Account, mode of making out, and limit of time for presentation.
§ 4073. Account must be filed one day prior to session.
§ 4074. What claims to be rejected. Proceedings on part allowance.
§ 4075. Dissatisfied claimant may sue, within limited time. Costs on recovery, when allowed.
§ 4076. What warrants must specify. Payment in order of presentation or registration.
§ 4077. In what transactions Supervisors not to be interested.
§ 4078. Transfer of application, when majority of Board not disinterested.
§ 4079. Notices, how given.
§ 4080. Board to provide for cultivating shade and ornamental trees. (Repealed.)
§ 4081. Require Assessors to report statistics.
§ 4082. Claims in favor of Supervisors.
§ 4083. Statement of county indebtedness, assets and rate of taxation.
§ 4084. Receive and apply donations of land, etc., for specific purposes.
§ 4085. Improve streams not navigable.
§ 4086. Penalty and damages recoverable on official bond of Supervisor.
§ 4087. Chapter does not apply to San Francisco.

4064. The Board must provide all poll lists, poll books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor,

and for the transmission and return of the same to the proper officers.

Basis of section—Stats. 1866, p. 511.

4065. Whenever, as canvassers, the Board of Supervisors have declared the result of an election held in the county, certificates must be by their Clerk issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the Title relative to "Elections."

Basis of section—Stats. 1861, p. 511.

Declaration of result—by Board, not conclusive, 30 Cal. 326.

Issuance of certificate of election—by Board cannot be compelled by party claiming to have been elected, 10 Cal. 376.

4066. No appointment to fill a vacancy in office must be made by the Board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the township or district, if for a township or district office.

Basis of section—Stats. 1863, p. 26.

4067. The Board may, by their Chairman or the Chairman of any committee, issue subpœnas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction.

4068. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a Court of justice. Disobedience to the subpœna, or to an order to attend, or to testify, may be enforced by the Board, and for that purpose the Board has all the powers conferred by, and the witness is subject to all the provisions of, Chapter II, Title III, Part IV, of THE CODE OF CIVIL PROCEDURE.

Provisions of Code of Civil Procedure—§§ 1985-1997.

4069. Neither the officers serving subpœnas nor the witnesses subpœnaed to testify in relation to matters of public concern before the Board of Supervisors are entitled to have their fees prepaid, but officers must serve the subpœnas and witnesses must attend without their fees being prepaid. The Board must allow them reasonable compensation for services and attendance.

Fees of witnesses—generally, Code Civ. Proc., § 1987.

4070. The Board must not for any purpose contract debts or liabilities, except in pursuance of law, or under ordinances

of their own, adopted in accordance with the powers herein conferred; and whenever debts and liabilities have been created which, added to the salaries of county officers and other estimated liabilities fixed by law for the remainder of the year, equal in the aggregate the revenue of the county for current expenses, no further allowance of any accounts must be made.

Loaning credit or borrowing money—restrictions or powers of county in, §§ 4004–4005.

Debts and liabilities equalling revenue—refers to estimate by Board of what the revenue will be, and not to actual amount of money received into the treasury, 47 Cal. 512-13.

4071. No county officer shall, except for his own service, present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the Board and oppose the allowance of any claim or demand made against the county. [Approved April 1, 1876.]

Origin of section—last sentence based on Stats. 1855, p. 55. First sentence added by amdt. 1876.

4072. The Board of Supervisors must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the Board within a year after the last item of the account accrued.

Section based—with modifications, on Stats. 1866, p. 836.

Claim against county—includes money judgment, hence must be presented to Board for allowance as an audited claim (under Stat. 1855) within the time prescribed by law, 43 Cal. 270. Generally, see § 4046, subd. 12n.

Presentation in manner prescribed by section—is pre-requisite to recovery by action (see § 4075) and must be fully averred in complaint, 52 Cal. 251.

All items of the claim—substantial compliance with requirement, 47 Cal. 508.

Verification—must be by oath annexed to the account, 37 Cal. 257.

Presentation within one year—failure bars unaudited claim (under Stats. 1854) and Board has no authority to allow it thereafter, 37 Cal. 193. Non-presentation within year after last item accrued; Legislative removal of bar for, does not legalize an illegal claim, 51 Cal. 608.

Claim presented by member of Board—§ 4082.

4073. No account must be necessarily passed upon by the Board unless made out as prescribed in the preceding section and filed by the Clerk at least one day prior to the session at which it is asked to be heard.

Basis of section—with modifications, Stats. 1866, p. 836.

4074. When the Board finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the Board may allow the claim in part, and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment the claim may be again considered at the next regular succeeding session of the Board, but not afterwards.

Basis of section—and of next, see § 4073*n*.

Not a proper county charge—effect of allowance of claims of such character, 46 Cal. 171; no attorneys fee for defending pauper prisoner, 17 Cal. 61. County not liable for personal injuries caused by acts of its officers at a public hospital, 21 Cal. 113; or by lack of repair of bridge on public highway, 21 Cal. 426; nor for injuries to property by overflow through abutment of a bridge wrongfully built by road overseer in channel of a stream, 25 Cal. 313: nor for medical care of sick, when, 28 Cal. 545.

Rejection—what is, 41 Cal. 70.

4075. A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the Board, but not afterward; and if in such action judgment is recovered for more than the Board allowed, on presentation of the judgment the Board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the Board allowed, the Board must pay the claimant no more than was originally allowed.

Action by claimant—requisites of complaint in, 52 Cal. 350; only after claim presented to Board and rejected, in cases of tort as well as contract, 7 Cal. 121.

4076. Warrants drawn by order of the Supervisors on the County Treasury for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the Treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

Basis of section—Stats. 1855, p. 54.

Transfer of funds—from swamp land and sinking funds to general county funds, and warrants thereon, Stats. 1880, p. 399 or 133.

4077. No member of the Board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the Board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

Basis of section—Stats. 1855, p. 55.

Interest of member of Board—in work officially as well as personally supervised by him, renders his claim for services therein illegal, despite Act directing Board to pass on claim after it was barred, 51 Cal. 608.

Prohibitions applicable to certain officers—§§ 920-926; not to be interested in any contract made by them in their official capacity, § 920.

4078. Whenever an application is made to the Board for an order, franchise, or license relating to any toll road, bridge, ferry, wharf, chute, pier, or other subject over which the Board has jurisdiction, in which a majority of the Board are not disinterested, the application, by order of the Board, must be transferred to the Board of Supervisors of an adjoining county; the Clerk of the Board must thereupon certify the application and all orders and papers relating thereto to the Board to which the transfer is ordered; and thereafter the Board to which the same is certified has full jurisdiction to hear and determine the application. [In effect April 3, 1880.]

Before amendment 1880—additional sentence at end dispensed with transfer where disinterested County Judge was authorized to act for Supervisor; section was then based on Stats. 1857, p. 322.

Toll road, bridge, ferry, etc.—see §§ 2779-2920.

Power of Board—generally, over toll franchises and licenses, § 4046, subd. 17.

Interested Supervisors not to act—on toll matters, § 2852.

4079. All public notices of proceedings of or to be had before the Board, not otherwise specially provided for, must be posted at the Court House door, and in each election precinct in the county. [Approved March 30; in effect July 6, 1874.]

Basis of section—Stats. 1855, p. 56.

4080. The Board, under such regulations as they may adopt, must encourage the planting and preservation of shade and ornamental trees on the public roads and highways, and on and about the public grounds and buildings of the county, and pay to persons planting and cultivating the same, for every living tree thus planted, at the age of four years, the sum of one dollar.

4081. The Board must require Assessors to report to the Surveyor General annually a true statement of the agricultural and industrial pursuits and products of the county, with such other statistical information as they may by ordinance direct, and enforce obedience of the Assessor thereto by deducting such proportion of his compensation as Assessor as to them may seem appropriate, for a failure to comply with the order.

Basis of section—Stats. 1866, p. 201.

4082. All claims against the county presented by members of the Board of Supervisors for per diem and mileage or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

Verified as other claims—see § 4072.

Other service—does not include services in sale of railroad stock belonging to county, 44 Cal. 315.

4083. The Board must have prepared by the Clerk, and when he is not also Auditor, then by that officer, and under their direction, prior to their regular November meeting, a statement, in duplicate, showing:

First—The indebtedness of the county, funded and floating, the amount of each class, and the rate of interest borne by each class of such indebtedness, or any part thereof.

Second—A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury subject to the payment of such indebtedness.

Third—The rate of taxation for county purposes as shown by the last levy made by the Board.

One of the statements mentioned in this section must be filed with the Board on the first day of the November meeting, and the other forwarded immediately, by mail or express, to the Controller of State. The Controller of State shall include in his biennial reports to the Governor a digest and synopsis, in tabular form, of all reports received by him under the provisions of this section, and shall name therein the counties, if any, which have failed to make the reports as herein provided. [In effect March 28, 1878.]

4084. The Board must receive from the United States or other sources lands and other property granted or donated to the county for the purpose of aiding in the erection of county buildings, roads, bridges, or other specific purposes, and may use the same therefor, and may provide for the sale of the same and the application of the proceeds thereof.

Basis of section—Stats. 1868, p. 69; 1870, pp. 757, 763.

4085. The Board may provide for widening, deepening, straightening, removing obstructions from, and otherwise improving, all streams within the county, for use as public highways for rafting and floating lumber, when such streams are not declared by law to be and are not in fact navigable for commercial purposes, and provide regulations for the use thereof; but no regulations of the Board, nor improvements directed, must in any manner interfere with the private rights or privileges of riparian owners, miners or others.

igable streams—see § 2348 *et seq.*
ting lumber—§§ 2389-2393.

86. Any Supervisor who neglects or refuses to perform uty imposed on him, without just cause therefor, or who lly violates any law provided for his government as such r, or fraudulently or corruptly performs any duty im- on him, or willfully, fraudulently, or corruptly attempts rform an act, as Supervisor, unauthorized by law, in ad- to the penalty provided in the Penal Code, forfeits to unty five hundred dollars for every such act, to be re- ed on his official bond, and is further liable on his official to any person injured thereby for all damages sustained.

87. This chapter does not apply to the City and County n Francisco.

endment 1880 declared unconstitutional—see § 4000a. It sub- ed for "City and County of San Francisco" the words "any con- ted government of a city and county." See Const. Cal. 1879, art.

CHAPTER III.

County Officers.

ARTICLE I. GENERAL PROVISIONS.
II. COUNTY JUDGE.
III. COUNTY TREASURER.
IV. SHERIFF.
V. COUNTY CLERK.
VI. COUNTY AUDITOR.
VII. COUNTY RECORDER.
VIII. DISTRICT ATTORNEY.
IX. COUNTY SURVEYOR.
X. CORONER.
XI. ASSESSORS, TAX COLLECTORS, SCHOOL SUPERINTENDENT, PUBLIC ADMINISTRATOR, AND COMMISSIONER OF HIGHWAYS.
XII. CONSTABLES, JUSTICES OF THE PEACE, AND INFERIOR OFFICERS.

ARTICLE I.

GENERAL PROVISIONS.

§ 4101. Qualifications for county office.
§ 4102. Same for district and township offices.
§ 4103. County officers enumerated.
§ 4104. Township officers.
§ 4105. Offices united and consolidated.
§ 4106. Consolidation of offices by the Board.
§ 4107. Proceedings on omission to consolidate and advertise the consolidation.
§ 4108. Oath, bond, and compensation of consolidated offices.
§ 4109. County and other officers, when elected, and term of office.
§ 4110. County Judges and Justices of Peace; election and term of office.
§ 4111. Supervisors, when elected. (Repealed.)
§ 4112. County and township officers may generally appoint deputies at discretion.
§ 4113. Mode of making appointments of assistants.
§ 4114. Official mention of principal officer includes deputies.
§ 4115. Vacancies, how filled.
§ 4116. What offices to be kept open at county seat. County Judge and his chambers.

§ 4117. Civil penalty for misconduct in office attaches to official bond.
§ 4118. County officers may administer oaths.
§ 4119. Certain officers must reside at county seat.
§ 4120. Absence of county officers from State.
§ 4121. Certain officers prohibited from practicing law, etc.
§ 4122. Official bonds classified, and amounts thereof.
§ 4123. When amount of bond is not fixed by law.
§ 4124. Other provisions relating to county officers.

4101. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the State, and an elector of the county in which the duties of the office are to be exercised.

Majority and citizenship—as qualifications for civil office, see § 841.

4102. No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the State, and an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

Majority and citizenship—see § 4101*a*.

4103. The officers of a county are: A County Judge, a Treasurer, a County Clerk, an Auditor, a Sheriff, a Tax Collector, a District Attorney, a Recorder, an Assessor, a Surveyor, a School Superintendent, a Coroner, a Public Administrator, a Board of Supervisors, and, in counties of the first class, for highway purposes, a Commissioner of Highways.

Amendment 1880 declared unconstitutional—see § 4000*a*. It provided for Superior Judge or Judges instead of County Judges, omitted Public Administrator and Commissioner of Highways from list of county officers, and authorized consolidation of two offices by Board of Supervisors.

4104. The officers of townships are: Two Justices of the Peace, two Constables, and such other inferior and subordinate officers as are provided for elsewhere in this Code, or by the Board of Supervisors.

Amendment 1880 declared unconstitutional—see § 4000*a*. It provided for township officers, consisting of at least one Justice of the Peace and Constable, and two of each if deemed necessary; also for formation of judicial townships.

4105. In all the counties of the third class:

1. The County Clerk shall be ex officio Auditor and Recorder;
2. The Sheriff shall be ex officio Tax Collector; and
3. The Coroner shall be ex officio Public Administrator.

Attempted repeal—of this section, (as named in title, but not by right number in body of Act) by Act of 1880 declared unconstitutional. See § 4000*a*.

Consolidation of offices—Sheriff and Tax Collector, no objection to union of offices, 6 Cal. 41; and see 14 Cal. 16; but offices are not so

blended that distinct bonds dispensed with, 9 Cal. 286; 38 Cal. 76; Coroner as ex-officio Sheriff, 6 Cal. 92; County Clerk, when also Recorder, is ex-officio Auditor, 9 Cal. 324; and when made ex-officio Recorder, holds same position as if in terms also made Recorder, 20 Cal. 94.

4106. By an ordinance adopted, recorded and published at least three months prior to a general election at which county officers are to be elected, the Boards of Supervisors of counties of the second class may unite and consolidate certain offices by declaring that:

1. The Recorder elected shall be ex officio Auditor;
2. The County Clerk elected shall be ex officio Auditor and Recorder;
3. The Sheriff elected shall be ex officio Tax Collector; and,
4. The Coroner elected shall be ex officio Public Administrator.

Attempted repeal of section—see § 4105*n*.

Consolidation of offices—of Recorder and Auditor, publication of ordinance effecting (see § 4107) must be by order of the Board, 52 Cal. 310; generally, § 4105*n*.

Separation of offices—of County Clerk and County Recorder, in a county where they had been previously joined, causes the Recorder to become Auditor, 9 Cal. 324; construction of Acts for, 17 Cal. 411.

Substitute for Public Administrator—Coroner, or appointee of Board as, Stats. 1872, p. 796.

Special acts—as to officers mentioned in foregoing two sections, consolidating or separating offices, fixing compensation, etc. Alameda County, Stats. 1876, p. 166. Butte County, Stats. 1876, p. 906; 1878, p. 287. Contra Costa County, Stats. 1872, p. 170. Fresno, Tulare and Kern Counties, Stats. 1876, p. 151, amd. by Stats. 1876, p. 353, and by Stats. 1878, p. 104. Kern County, see Fresno, etc. Counties, *supra*. Lake County, Stats. 1876, p. 599. Mendocino County, Stats. 1872, p. 17. Merced County, Stats. 1874, p. 660. Placer County, Stats. 1874, p. 799, and see 17 Cal. 411. San Diego County, Stats. 1876, p. 558. San Joaquin County, Stats. 1874, p. 692. San Luis Obispo County, Stats. 1876, p. 608. Santa Clara County, Stats. 1876, p. 35; see also previous Act, Stats. 1876, p. 610. Santa Cruz County, Stats. 1876, p. 576. Solano County, Stats. 1872, p. 624. Stanislaus County, Stats. 1874, p. 277, amd. by Stats. 1874, p. 438; also see Stats. 1874, p. 537. Tehama County, Stats. 1874, p. 796, amd. by Stats. 1876, p. 232. Tulare County, Stats. 1874, p. 60; see also combined head of Fresno, Tulare and Kern Counties. Tuolumne County, Stats. 1876, p. 45.

4107. When there is an omission by the Board of Supervisors to consolidate and to advertise the consolidation of offices as in the preceding section authorized, each office not so consolidated must be filled by an election.

Omission to advertise the consolidation—failure of Board to order publication, is such omission, 52 Cal. 311.

4108. When offices are united and consolidated either by the Code or by order of the Supervisors, the person elected to fill the offices so united and consolidated must take the oath and give the bond required for each, discharge all the duties

ining to each, and receive the compensation affixed to ffices.

solidation of offices—§ 4106*n*.

arate bonds for distinct offices—though held by same person,

09. All elective county, city and county, and township rs, except Superior Court Judges, Superintendents of ols, and Assessors, shall be elected at the general election held in the year eighteen hundred and eighty-two, and at eneral election to be held every second year thereafter, hall take office on the first Monday after the first day of ary next succeeding their election, and shall hold office wo years. The years that said officers are to hold office o be computed respectively from and including the first day after the first day of January of any one year to and ding the first Monday after the first day of January of ext succeeding year; *provided*, that all Supervisors and ces of the Peace shall take office on the first Monday the first day of January next succeeding their election, hall hold office for two years. The years during which pervisor and Justice of the Peace is to hold office are to mputed respectively from and including the first Monday nuary of any one year to and excluding the first Monday nuary next succeeding. Assessors of every county, and ery city and county, shall be elected at the general elec- to be held on the first Tuesday after the first Monday in mber, eighteen hundred and eighty-two, and at the gen- election to be held every four years thereafter, and shall office for the term of four years from and after the first day after the first day of January next succeeding their ion. [In effect March 7, 1881.]

ction and terms of county officers—held not affected by Const. 879, but left to control of Legislature, in Barton v. Kalloch, Sept. 80, 6 P. C. L. J. 330, 338. Amendment 1880, to this section, purport- conform to present Constitution, was declared unconstitutional onard v. January, Sept. 16, 1880.

endment 1881—to this section, held not to apply to local officers n Francisco, in Wood v. Election Commissioners, June 15, 1881.

n Francisco Consolidation Act—still governs as to time of elec- etc., of officers in that city and county, Barton v. Kalloch, *supra*, d v. Election Commissioners, *supra*.

wnship officers—special Acts concerning, previous to amdt. 1881 ction: Alameda County, Assessors, Stats. 1874, p. 90. Calaveras ty, Stats. 1876, p. 78. Los Angeles, Stats. 1876, p. 4. Tuolumne ty, Stats. 1874, p. 453.

pervisors—of various counties, special Acts concerning election, ization, compensation, etc., previous to amdt. 1881 to section: eda, Stats. 1878, p. 736. Amador, Stats. 1874, p. 43; see Stats. 1876, 9. Butte, Stats. 1876, p. 906. Calaveras, Stats. 1876, p. 141. Del e, Stats. 1872, p. 756, amd. by Stats. 1874, p. 12. El Dorado, Stats. p. 872; and see Stats. 1874, p. 825, amd. by Stats. 1876, p. 681, and by

Stats. 1878, p. 281. Humboldt, Stats. 1876, p. 333. Lake, Stats. 1876, p. 398. Mendocino, Stats. 1874, p. 33; 1878, p. 1021. Monterey, Stats. 1876, p. 134. Napa, Stats. 1874, p. 158, amd. by Stats. 1874, p. 329. Placer, Stats. 1874, p 347, amd. by Stats. 1874, p. 775, and Stats. 1876, p. 573. San Bernardino, Stats. 1874, p. 111; 1876, p. 488. San Diego, Stats. 1872, p. 191; 1876, p. 398. San Joaquin, Stats. 1874, p. 766. San Luis Obispo, Stats. 1876, p.493, amd. by Stats. 1878, p. 36. San Mateo, Stats. 1874, p. 479, amd. by Stats. 1874, p. 779. Santa Clara, Stats. 1876, p. 35. Santa Cruz, Stats. 1876, p. 576; 1878, p. 155. Sonoma, Stats. 1874, p. 382, amd. by Stats. 1876, p. 728. Tehama, Stats. 1874, p. 816. Tuolumne, Stats. 1874, p. 154.

4110. The election and terms of office of County Judges and Justices of the Peace are provided for in Title I of the Code of Civil Procedure.

Attempted repeal of section by Act of 1880—declared void, see § 4000*n*.

County Judges—on abolition of existing Courts by Const. Cal. 1879, art. 22, § 3, superseded by Judges of Superior Courts; see Code Civ. Proc., § 65 *et seq.*

Justices of the Peace—held judicial officers within the meaning of Const. Cal. 1879, art. 22, § 10, providing for election and terms of such officers, in People v. Ransom, Feb. 18, 1881, 7 P. C. L. J. 137, affirming McGrew v. San José, Sept. 7, 1880, 6 P. C. L. J. 286.

4111. [Repealed; in effect March 7, 1881.]

Previous ineffectual repeal of section—by Act of 1880, which was declared void, see § 4000*n*.

4112. Every county and township officer, except County Judge, Supervisor, and Justice of the Peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office.

County Judge—see § 4110*n*.

Deputies—powers, duties, etc., § 865 and notes. Official bond may be required from, by party appointing, § 985. Aliens, prohibition of appointment of certain, Stats. 1880, p. 116 or 23. Deputy of ex officio Auditors and Recorders, Board of Supervisors may allow, Stats. 1880, p. 155 or 27.

4113. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing, and filed in the office of the County Clerk.

4114. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

4115. A vacancy in the office of County Judge is filled by an appointee of the Governor. All other vacancies in county and township offices are filled by appointments made by the Board of Supervisors. Appointees hold until the vacancies are filled by election.

Amendment 1880 declared unconstitutional—see § 4000*n*.

nty Judge—see § 4110*n*.; changed to Superior by void amdt. 1880.
ancies—generally, §§ 996, 997, 999*n*., 1004; in Board of Supervisors,

16. Sheriffs, Clerks, Recorders, Treasurers, Tax Col-
's, District Attorneys, and Auditors, must have their
s at the county seat, and keep them open for the transac-
of business from nine o'clock A. M. till five o'clock P. M.,
day in the year, except holidays. The County Judge
have chambers at the county seat, and must establish
rules and hours for official business as may be necessary
ie dispatch thereof. He must attend at his chambers at
one day in each week.

endment 1880 declared unconstitutional—see § 4000*n*.
idays—changed to non-judicial days by void amdt. 1880.
nty Judge—see § 4115*n*. Chambers, provisions concerning omitted
d amdt. 1880.
is of section—Stats. 1850, pp. 115, 261; 1851, pp. 190, 199; 1863, p. 56.

17. Whenever, except in criminal prosecutions, any
al penalty, forfeiture, or liability is imposed on any officer
on-performance or mal-performance of official duty, the
ity therefor attaches to the official bond of such officer,
o the principal and sureties thereon.
cial bonds—§ 947-986.

18. Every officer mentioned in section four thousand
hundred and three, and every Justice of the Peace, may
nister and certify oaths.
ministration of oaths—and affirmations, Code Civ. Proc., §§ 2093-

19. The following officers must reside at the county
of their respective counties: The County Judge, the
surer, the County Clerk, the Auditor, the Sheriff, the
Collector, the District Attorney, the Recorder.

endment 1880 declared unconstitutional—see § 4000*n*. It
ed County Judge and Recorder from list of officers.
lation of section—by County Treasurer, not a misdemeanor, 47
29.

20. A county officer shall, in no case, absent himself
the State for a period of more than sixty days, and for
riod without the consent of the Board of Supervisors of
ounty.. [In effect February 10, 1876.]

ore amendment 1876—absence prohibited for more than thirty
unless (before amdt. 1874) with the consent of the Legislature.

21. Sheriffs, Clerks, and Constables and their deputies
rohibited from practicing law or acting as attorneys or

counselors at law, or having as a partner a lawyer or any one who acts as such.

Basis of section—Stats. 1850, pp. 261, 263; 1851, p. 190.

4122. County officers must execute official bonds corresponding to the class of the county of which they are officers, in the following amounts:

First—Sheriffs, first class, sixty thousand dollars; second class, twenty-five thousand dollars; third class, ten thousand dollars.

Second—Clerks, first class, twenty-five thousand dollars; second class, fifteen thousand dollars; third class, six thousand dollars.

Third—Auditors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

Fourth—Treasurers, first class, one hundred thousand dollars; second class, eighty thousand dollars; third class, sixty thousand dollars.

Fifth—Recorders, first class, ten thousand dollars; second class, five thousand dollars; third class, two thousand dollars.

Sixth—District Attorneys, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

Seventh—Assessors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, three thousand dollars.

Eighth—Tax Collectors, first class, fifty thousand dollars; second class, thirty thousand dollars; third class, fifteen thousand dollars.

Ninth—Surveyors, first class, ten thousand dollars; second class, five thousand dollars; third class, one thousand dollars.

Tenth—School Superintendents, first class, five thousand dollars; second class, three thousand dollars; third class, one thousand dollars.

Eleventh—Coroners, first class, five thousand dollars; second class, two thousand dollars; third class, one thousand dollars.

Twelfth—Public Administrators, first class, thirty thousand dollars; second class, twenty thousand dollars; third class, ten thousand dollars.

Thirteenth—Supervisors, first class, fifteen thousand dollars; second class, ten thousand dollars, third class, two thousand dollars. [Approved March 30; in effect July 6, 1874.]

Before amendment 1874—section had, in subd. 4, fifty instead of eighty, and twenty instead of sixty.

County officers—§ 4103.

Bonds of county and township officers—approval, filing and recording, § 950.

Official bonds—generally, §§ 947-986; when offices consolidated, see § 4105*n*., 4108*n*.

Class of the county—see § 4006 and note.

SUBDIVISION 4. **Treasurer's bond**—liability of sureties on, 45 Cal. 12.

SUBDIVISION 8. **Tax Collector's bond**—fully discussed, 25 Cal. 520 *et seq.*

Special Acts—fixing bonds of county officers in various counties. Alpine, Stats. 1876, p. 140. Calaveras, see Mariposa. Colusa, Stats. 1878, p. 569. Contra Costa, Stats. 1872, pp. 158, 183. Del Norte, Stats. 1878, p. 2. El Dorado, Stats. 1872, p. 594. Fresno, Tulare and Kern, Stats. 1876, p. 16. Kern, see last sub-title, also Tulare, *infra*. Lassen, see Modoc. Marin, Stats. 1878, p. 196. Mariposa, Tuolumne and Calaveras, Stats. 1876, p. 17. Merced, Stats. 1872, p. 21. Modoc and Lassen, Stats. 1876, p. 154. San Diego, Stats. 1876, p. 558. Santa Cruz, Stats. 1876, p. 121. Tulare, and Kern, Stats. 1876, p. 172; see also Fresno. Tuolumne, see Mariposa. Ventura, Stats. 1878, p. 334.

4123. When the amount of the bond to be given by any county or township officer is not fixed by law, the amount must be fixed by the Board of Supervisors.

4124. Other provisions relating to the different classes of officers are contained in Chapter VII, Title I of Part III of this Code.

Different classes of officers—general provisions relating to, §§ 841-1032.

ARTICLE II.

JUDGE OF SUPERIOR COURT.

§ 4134. **Duties of Judge of the Superior Court.**

4134. Each Judge of the Superior Court must:

1. Perform the duties of a magistrate;
2. Hold Superior Courts;
3. Grant certificates to the official character of the County Clerk;
4. Certify to the ownership of wrecked property, or its proceeds;
5. Perform such other duties as are prescribed in any of the laws of this State. [In effect April 3, 1880.]

Before amendment 1880—section named County Judge instead of Judge of Superior Court, (see § 4110*n*.,) and County and Probate Courts instead of Superior, and in subd. 3 provided for taking and certifying acknowledgments.

Later attempted repeal in 1880 declared unconstitutional—see § 4000*n*.

ARTICLE III.

COUNTY TREASURER.

§ 4144. Duties of County Treasurer.
§ 4145. To receive no money, except on certificate of Auditor.
§ 4146. Treasurer's and Auditor's receipt for money.
§ 4147. Mode of redeeming warrants.
§ 4148. Registry of warrants, when no funds.
§ 4149. Notice of redemption of warrants bearing interest.
§ 4150. Contents of such advertisement.
§ 4151. Priority in payment of warrants.
§ 4152. Action when warrants not represented in time.
§ 4153. Treasurer must note the interest paid on warrant.
§ 4154. Monthly and annual settlements with Auditor.
§ 4155. Report to Board of Supervisors each session.
§ 4156. Penalty for not settling or reporting.
§ 4157. When he must sue District Attorney.
§ 4158. When he must sue Coroner.
§ 4159. Disposition of property received from Coroner.
§ 4160. Money thus derived, conditions of repayment.
§ 4161. Treasurer must not part with or loan public money, but may make special deposit.
§ 4162. Supervisors may suspend Treasurer.
§ 4163. Delivery of effects of deceased Treasurer. No percentage on money received from predecessor.
§ 4164. Books and vouchers subject to inspection.
§ 4165. Treasurer must permit examination of his books, and counting of money in treasury.

4144. The County Treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

2. File and keep the certificates of the Auditor delivered to him when moneys are paid into the Treasury;

3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

4. So keep his books that the amount received and paid out on account of separate Funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the County Auditor;

6. Disburse the county moneys only on county warrants issued by the County Auditor, based on orders of the Board of Supervisors, or as otherwise provided by law.

County Treasurer—liability of bondsmen of, 45 Cal. 12; duty, to safely keep County Clerk's official bond, § 986.

SUBDIVISION 6. **Disbursements only on proper warrants**—hence County Treasurer cannot be compelled to pay interest on county bonds, 11 Cal. 351; and may refuse to pay warrants of the Auditor for demands allowed by the Supervisors, (where no express order by Supervisors for their payment, 23 Cal. 447,) but not legally chargeable against the county, 20 Cal. 594; nor can he be compelled to pay where warrants drawn on a void contract, 26 Cal. 372, or where warrant is made to bearer, and lacks assignment from party in whose favor it is drawn, 23 Cal. 125. Mandamus is remedy, to compel payment, but not more money than there is in fund out of which payment ordered. 39 Cal. 593. Not authorized for fees of short-hand reporter of criminal proceedings before Justice of the Peace. Fox v. Lindley, May 27, 1881.

4145. He must receive no money into the Treasury unless accompanied by the certificate of the Auditor provided for in Section 4217.

4146. When any money is paid to the County Treasurer he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the County Auditor, who must charge the Treasurer therewith and give the person paying the same a receipt.

4147. When a warrant is presented for payment, if there is money in the Treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

Payment of warrants—see § 4144, subd. 6th.

4148. When any warrant is presented to the Treasurer for payment and the same is not paid for want of funds, the Treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant bears seven per cent. per annum interest.

Not paid for want of funds—warrants thus endorsed are preferred claims, payable in the order of their registry (see § 2151), 18 Cal. 196.

4149. When there are sufficient moneys in the Treasury to pay the warrants drawing interest, the Treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the Court House door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest.

Basis of section—Stats. 1850, p. 115.

4150. In advertising warrants under the provisions of this section in any newspaper, the Treasurer must not publish

the warrants in detail, but give notice only that county warrants presented for payment prior to such a date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the Treasurer must designate such payable warrants in the advertisement.

4151. Warrants drawn on the Treasury and properly attested are entitled to preference as to payment out of moneys in the Treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the Treasurer, and upon the receipt of moneys into the Treasury not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

Preference according to Priority—of registration, under Act of 1850, 5 Cal. 332; nor is there anything changing this order of payment in the Act of 1855, 6 Cal. 281; nor can it be changed by the Supervisors, 6 Cal. 285. Warrants coming within Act of 1850, 18 Cal. 397.

4152. Should such warrants not be re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the Treasurer applied to the payment of unpaid warrants next in order of registry. The Board of Supervisors may, on application, and presentation of warrants properly indorsed, which have been advertised, pass an order directing the Treasurer to pay them out of any money in the Treasury not otherwise appropriated.

4153. When the Treasurer pays any warrant on which any interest is due he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.

4154. The Treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue, of whatsoever nature and kind, with the Auditor, on the first Monday of each month. For the purpose of making such settlement he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the Auditor's receipt therefor. He must also make a full settlement of all accounts with the Auditor annually on the first Monday of January, in the presence of the Supervisors, who have a supervisory control thereof.

4155. Each County Treasurer must make a detailed report, at every regular meeting of the Board of Supervisors of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the Treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

4156. If any County Treasurer neglects or refuses to settle or report, as required in Sections 4154, 4155, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the Board of Supervisors must institute suits for the recovery thereof.

4157. If the District Attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of Section 4256, the County Treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent. thereon by way of damages.

4158. If the Coroner, or any Justice of the Peace acting as Coroner, fails to deliver to the Treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the Public Administrator or other legal representative of the decedent, as required by Section 4287, the Treasurer must proceed against the Coroner, or Justice acting as Coroner, to recover the same by civil action in the name of the county.

4159. The Treasurer, upon receiving from the Coroner, or Justice acting as Coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in in like manner, he must within thirty days sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

4160. If the money in the Treasury is demanded within six years by the legal representatives of the decedent, the Treasurer must pay it to them, after deducting the fees and expenses of the Coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the Board of Supervisors.

4161. The County Treasurer must keep all moneys belonging to this State or to any county of this State in his own possession until disbursed according to law. He must not place

the same in the possession of any person, to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the safe keeping of the public moneys.

4162. Whenever an action based upon official misconduct is commenced against any County Treasurer, the Supervisors may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

4163. In case of the death of any County Treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the Treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessor.

4164. The books, accounts, and vouchers of the Treasurer are at all times subject to the inspection and examination of the Board of Supervisors and Grand Jury.

4165. The Treasurer must permit the County Judge and Auditor to examine his books and count the money in the Treasury whenever they may wish to make an examination or counting.

Amendment 1880 declared unconstitutional—see § 4000*n*. It substituted the Chairman of the Board of Supervisors, and the District Attorney, for the County Judge.

County Judge—see § 4110*n*.

ARTICLE IV.

SHERIFF.

§ 4175. "Process" and "notice" defined.
§ 4176. Duties of Sheriff.
§ 4177. Return by mail to another county.
§ 4178. Return prima facie evidence.
§ 4179. Penalty for delaying return.
§ 4180. Liability for refusing to levy or sell.
§ 4181. Damages for refusing to pay over money.
§ 4182. Liability for permitting an escape.
§ 4183. Liability for a rescue.
§ 4184. No action for escape or rescue after return or recapture.
§ 4185. Direction to Sheriff must be in writing.
§ 4186. When office of Sheriff deemed vacant.
§ 4187. When Sheriff justified in executing process.
§ 4188. Officer to exhibit process.
§ 4189. Sheriff to act as crier.
§ 4190. Service on Sheriff, how made.

§ 4191. Coroner to execute process when Sheriff is a party.
§ 4192. Elisors to act in cases designated.
§ 4193. Other duties of Sheriff.

4175. "Process," as used in this article, includes all writs, warrants, summons, and orders of Courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any Court, Board, or officer, or when required by law to be served independently of such proceeding.

4176. The Sheriff must:

1. Preserve the peace;

2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or who have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

4. Attend all Courts, except Justices', Probate, and Police Courts, at their respective terms, held within his county, and obey their lawful orders and directions;

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

6. Take charge of and keep the County Jail and the prisoners therein;

7. Indorse upon all process and notices the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

8. Serve all process and notices in the manner prescribed by law;

9. Certify under his hand upon process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

Other duties of Sheriff—besides those mentioned in this section, see § 1493*a*., and various intervening sections.

SUBDIVISION 1. **Sheriff is peace officer**—Penal Code, § 817.

SUBDIVISION 2. **Refusal of Sheriff to make arrest**—punishment for, Penal Code, § 142.

SUBDIVISION 4. **Probate Courts**—superseded by Superior Courts after abolition of existing Courts by Const. Cal. 1879, art. 22, § 3. Abolition of terms, Const. Cal. 1879, art. 6, § 5.

Obey orders and directions—to provide Court-rooms, etc., Code Civ. Proc., § 144.

SUBDIVISION 7. **Process and notices**—defined, § 4175.

SUBDIVISION 8. **Process and notices**—see subd. 7*a*. Summons, service of, Code Civ. Proc., § 410 *et seq.*

SUBDIVISION 9. **Return of process or notices**—§§ 4177-4179.

4177. When process or notices are returnable to another county, he may inclose such process or notice in an envelop, addressed to the officer from whom the same emanated, and deposit it in the post office, prepaying postage.

4178. The return of the Sheriff, upon process or notices, is prima facie evidence of the facts in such return stated. [Approved March 30; in effect July 6, 1874.]

Sheriff's return—construction of, 38 Cal. 428.

Prima facie evidence—defined, Code Civ. Proc., § 1833.

4179. If the Sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

Sureties on Sheriff's official bond not liable—for the penalty imposed by this section, but only for actual damages sustained, 52 Cal. 493.

4180. If the Sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property.

Sheriff's duty to execute process—§ 4187.

Sheriff's failure to levy or sell—Insufficient excuse for failure to levy upon money in the hands of a corporation, 49 Cal. 658; when may be ordered by Court to proceed and sell on a decree foreclosing a mortgage, 49 Cal. 351.

Sale without notice—liability of officer for, Code Civ. Proc., § 693.

Resale—limit of liability of officer on, Code Civ. Proc., § 697.

Property liable to seizure—may be levied upon and sold, but not property exempt from execution, 39 Cal. 700; or belonging to a third party, 42 Cal. 11.

Indemnity bond—may be required by Sheriff where property claimed by third person, see Code Civ. Proc., § 689; terms "sufficient indemnity" in last named section, 8 Cal. 227; 15 Cal. 75; 18 Cal. 622; 32 Cal. 23; 36 Cal. 455; when several executions, 8 Cal. 227; 13 Cal. 521; 34 Cal. 629. Summary remedy against sureties on, see Code Civ. Proc., § 1055; that section strictly construed against Sheriff, 28 Cal. 102; and indemnifier may intervene, 21 Cal. 442. Sureties on, liability to officers and others, McBeth v. McIntyre, July 28, 1880, 6 P. C. L. J. 41. Assignment of, its effect, McBeth v. McIntyre, Jan. 14, 1881, 6 P. C. L. J. 1023.

4181. If he neglects or refuses to pay over on demand, to the persen entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

Not paying over money received by him—by virtue of his office; office of Sheriff is vacant for, when he remains committed sixty days on account of, § 4186.

Legal fees of Sheriff—see General Fee Act, Stats. 1870, p. 148, with amendments, as modified by local statutes; in San Francisco, see Stats. 1872, p. 776. Mileage, 49 Cal. 323; 50 Cal. 119. For keeping property, Court must certify to be reasonable, 48 Cal. 590; 49 Cal. 421. Under Act of 1857, 16 Cal. 386.

4182. A Sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation.

Person arrested in a civil action—in Justices' Court, Code Civ. Proc., §§ 864, 865. Witness, Code Civ. Proc., § 2069.

Escapes of criminal offenders—Penal Code, §§ 105-110.

SUBDIVISION 1. **Liability as bail**—Code Civ. Proc., § 501.

SUBDIVISION 3. **Commitment**—or attachment for contempt, detention on, Code Civ. Proc., § 1214.

4183. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

Liability for Rescue—Code Civ. Proc., § 501.

Rescue of criminals—Penal Code, § 101.

4184. An action cannot be maintained against the Sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the Sheriff.

4185. No direction or authority by a party or his attorney to a Sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the Sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney.

4186. When the Sheriff is committed under an execution or commitment, for not paying over money received by him

by virtue of his office, and remains committed for sixty days, his office is vacant.

Vacancy in office of Sheriff—6 Cal. 92.

4187. A Sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

Ministerial officer—Sheriff as, 6 Cal. 42.

4188. The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

4189. The Sheriff in attendance upon Court must act as the Crier thereof, call the parties and witnesses and all other persons bound to appear at the Court, and make proclamation of the opening and adjournments of the Court, and of any other matter under its direction.

4190. Service of a paper, other than process, upon the Sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

4191. When the Sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the Sheriff to execute, must be executed by the Coroner of the county.

Fees of Coroner—or Elisor, § 4192*a*.

4192. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the Court or the Judge thereof, and denominated an Elisor, in the following cases:

1. When the Sheriff and Coroner are both parties;

2. When either of these officers is a party, and the process is against the other; and

3. When either of these officers is a party, and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the Court in which the proceeding is pending, or the Judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

When process is delivered to an Elisor, he must execute and return it in the same manner as the Sheriff is required to execute similar process. [In effect April 3, 1880. See note.]

Later amendment of 1880 declared unconstitutional—as part of County Government Bill (see § 4000*n*.), leaving in force prior amendment above given.

Before amendments 1880—section contained the words "or a County Judge" after the clause "or a Judge thereof," and was based on Stats. 1857, p. 323.

Elisor—to summon jury, Code Civ. Proc., §§ 226-227, 14 Cal. 120.

Fees of Elisor—or Coroner, same as of Sheriff, Stats. 1874, p. 794.

4193. The Sheriff must perform such other duties as are required of him by law.

Sheriff—badge of office, for himself and deputies, to be provided by County Boards of Supervisors, Stats. 1876, p. 803.

Other duties—Sheriff as Tax Collector, see under note to § 4105 on Consolidation of Offices, also § 4106; duty as to licenses, see § 3387. Need not turn over to his successor personal property held by him under a levy of a writ of attachment, 45 Cal. 613. To summon jurors, Code Civ. Proc., §§ 225-227. To remove intruder on public land, § 42. To serve notice of contest of election of member of Legislature, § 276. To serve process of Courts-martial, § 2084. To deliver persons to insane asylum, § 2218. To dispose of floating lumber, § 2391. As to wrecked property, §§ 2403, 2404, 2406, 2407, 2408, 2412, 2415, 2417. To be ex officio auctioneer, when, § 3291. To attend meetings of Board of Supervisors, § 4047. To reside at county seat, § 4119. Not to practice law, etc., § 4121. In criminal cases, see Penal Code, §§ 243, 1216, 1224, 1229, 1230, 1601, 1602, 1609, 1611.

ARTICLE V.

COUNTY CLERK.

§ 4204. Duties of County Clerk.
§ 4205. Other records and duties.

4204. The County Clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office.

2. Act as Clerk of the Board of Supervisors, and as Clerk of the District, County, and Probate Courts, and attend each term thereof, and upon the Judges at Chambers when required.

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each Court a docket, in which must be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding therein, with the date thereof, and a list of all the fees charged.

4. Keep for the District and County Courts, in separate volumes, an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns,

under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in Judgment Book," "Page of Minute Book of District Court;" also an index labeled "General Index—Defendants," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in Judgment Book," "Page in Order Book of District Court."

Amendment 1880 declared unconstitutional—see § 4000a. It substituted name of Superior Court for names of other Courts (pursuant to Const. Cal. 1879, art. 22, § 3), and also added at end of section the words "keep an index of persons naturalized."

County Clerk—may issue exempt fire certificates, § 3339. Election for removal of county seat, statement of result must be deposited in office of, § 3883. Term of, in San Francisco, under Const. Cal. 1879, 53 Cal. 745. Bond of, § 4122, subd. 2. Fees of, see subd. 3a. Deputies and assistants of, Stats. 1880, p. 5, and p. 104 or 20. Authority of deputy, 20 Cal. 150.

SUBDIVISION 1. **Issue process**—attest proceedings and certify acknowledgments, 20 Cal. 150.

Docket—of Justices' Court judgment, effect of, 31 Cal. 220.

SUBDIVISION 2. **Clerk of Board of Supervisors**—County Clerk is ex officio, § 4029.

Clerk of Courts—as such, to certify facts of contest of title to office, § 937; not to make public divorce and attachment papers, when, § 1032.

SUBDIVISION 3. **Fees charged**—16 Cal. 386; 30 Cal. 237; 42 Cal. 650.

4205. He must keep such other records and perform such other duties as are prescribed by law.

Other duties of County Clerk—Contested elections, in, §§ 274, 275, 281. Ex-officio Sealer of Weights and Measures, as, §§ 562-564, 566-567. Official bonds, as to, §§ 800, 950, 986. Elections, as to, 1094 *et seq.*, 1281-1288, 1284, 1287, 1289, 1293, 1308, 1310. Ex-officio Auditor and Recorder, when to be, § 4105, subd. 1, § 4106, subd. 2. County Seat, to keep office open at, § 4116; and to reside there, § 4119. Law, not to practice, etc., § 4121. See further, Civil and Penal Codes, and Code of Civil Procedure.

ARTICLE VI.

AUDITOR.

§ 4215. Auditor to draw warrants authorized by Supervisors or law.
§ 4216. Warrants must specify what.
§ 4217. Settlement with debtors to the county.
§ 4218. To keep accounts, file receipts, etc.
§ 4219. Warrants of Auditor to be numbered, marked and registered.
§ 4220. Auditor to examine books of Treasurer, when.
§ 4221. Auditor and County Judge to count money in Treasury and make statement.
§ 4222. Statements to be filed and posted.

§ 4223. Quarterly statements concerning collection of revenue and financial condition of county.
§ 4224. Other duties.

4215. The Auditor must draw warrants on the County Treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the Board of Supervisors; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal.

Demand ordered paid by Board of Supervisors—Auditor cannot refuse to draw warrant for, because there is no money in the county treasury, 47 Cal. 488; but otherwise, if allowance void, 37 Cal. 193. Invalidity of basis of claim allowed by Supervisors, held not to give Auditor discretionary power to reject the claim, S. F. Gaslight Co. v. Dunn, Feb. 7, 1881, 7 P. C. L. J. 96. Disbursements by Treasurer on, see § 4144, subd. 6a.

4216. All warrants must distinctly specify the liability for which they are drawn, and when it accrued.

Warrants for current expenses—Same requisites for, § 4076.

4217. The Auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the County Treasury, and must certify the amount to the Treasurer, and upon the presentation and filing of the Treasurer's receipt therefor give to such person a discharge, and charge the Treasurer with the amount received by him.

4218. The Auditor must keep accounts current with the Treasurer, and when any person deposits with the Auditor any receipt given by the Treasurer for any money paid into the Treasury, the Auditor must file such receipt and charge the Treasurer with the amount thereof.

4219. All warrants issued by the Auditor during each year, commencing with the first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

4220. The Auditor must, between the first and tenth of each month, examine the books of the Treasurer and see that the same have been correctly kept.

4221. The County Judge and Auditor must, at least once in each month, count the money in the County Treasury, and make and verify in duplicate statements showing:

1. The amount of money that ought to be in the Treasury;

2. The amount and kind of money actually therein.

Amendment 1880 declared unconstitutional—see § 4000a. It substituted for County Judge, the Chairman of the Board of Supervisors and the District Attorney.

4222. They must file one of the statements in the office of the County Clerk, and the Auditor must post and maintain the other in his office for at least a month thereafter.

4223. The Auditor and Treasurer of each county must, on the first Monday in February, May, August, and November, make a joint statement to the Board of Supervisors, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the County Treasury, the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; the total amount of warrants drawn and unpaid, and accounts or claims audited, or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county.

4224. The Auditor must discharge such other duties as are required by law.

Other duties of Auditor—As to licenses, §§ 3356-3358, 3364; as to taxes, see Title on Revenue, *passim*. When County Clerk is ex officio Auditor and Recorder, see §§ 4105, 4106 and notes.

ARTICLE VII.

RECORDER.

§ 4234. Recorder to procure record books, and have custody of records and papers in office.
§ 4235. What to be recorded.
§ 4236. Indexes to be kept by Recorder.
§ 4237. Records of certificates of sale.
§ 4238. To record decrees of partition, etc.
§ 4239. Filing of copy to impart notice.
§ 4240. Combination of indexes, and arrangement of names therein.
§ 4241. Recorder's duty on receipt of instrument to be recorded
§ 4242. Indorsing book, etc., when record made, and returning instrument.
§ 4243. Recorder to make searches and furnish certificates thereof.
§ 4244. Liable for neglect of certain duties.
§ 4245. Fees to be prepaid.
§ 4246. Records to be open for inspection.

4234. The Recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the Board of Supervisors. He has the custody of and must keep all books, records, maps, and papers deposited in his office.

Recorder—County Clerk as ex officio, §§ 4105, 4106 and notes; as Auditor, 9 Cal. 324; 20 Cal. 94; when preferred to person elected as Auditor, 17 Cal. 411; power to certify acknowledgments to deeds, 25 Cal. 175.

4235. He must, upon the payment of his fees for the same, record separately, in large and well bound separate books, in a fair hand:

1. Deeds, grants, transfers, and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;
2. Mortgages of personal property;
3. Certificates of marriage and marriage contracts;
4. Wills admitted to probate;
5. Official bonds;
6. Notices of mechanics' liens;
7. Transcripts of judgments which by law are made liens upon real estate;
8. Notices of attachments upon real estate;
9. Notices of the pendency of an action affecting real estate, the title thereto, or possession thereof;
10. Instruments describing or relating to the separate property of married women;
11. Notices of pre-emption claims;
12. Births and deaths; and,
13. Such other writings as are required or permitted by law to be recorded.

Recording transfers—Civil Code, §§ 1185-1217; what may be recorded, §§ 1158-1165 of same; mode of recording, §§ 1169-1173 of same; effect of recording, or the want thereof, §§ 1213-1217 of same.

SUBDIVISION 1. Transfers—see Recording Transfers, note *supra*.

Mortgages—Civil Code, § 2952; assignment of, § 2934 of same; discharge of, §§ 2938-2941 of same.

Powers of Attorney—to execute a mortgage, Civil Code, § 2933.

Proof or acknowledgment of instruments—Civil Code, §§ 1180-1207.

SUBDIVISION 2. Mortgages of personal property—Civil Code, §§ 2959-2964.

SUBDIVISION 3. Marriage certificates—Civil Code, §§ 74-77; and contracts, Civil Code, §§ 179, 180; Register of marriages, see § 3079 of this Code.

SUBDIVISION 4. Wills admitted to probate—see Code Civ. Proc., §§ 1315, 1322.

SUBDIVISION 5. Official bonds—§§ 950, 951.

SUBDIVISION 6. Mechanics' lien—Code Civ. Proc., § 1187.

SUBDIVISION 7. Judgments affecting real property—Civil Code, § 1159; and see this Code, § 4328.

SUBDIVISION 8. Attachment of realty—Code Civ. Proc., § 542.

SUBDIVISION 9. Lis pendens—Code Civ. Proc., § 409.

SUBDIVISION 10. Separate property of married women—Civil Code, §§ 165, 166.

SUBDIVISION 11. Pre-emption claims—see Civil Code, § 1158.

SUBDIVISION 12. Births and deaths—§ 3079, also § 3080.
SUBDIVISION 13. What may be recorded—Civil Code, §§ 1158-1165.

4236. Every Recorder must keep:

1. An index of deeds, grants, and transfers, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, or transfers," and "Where recorded."

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, or transfers," and "Where recorded."

3. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," "When discharged."

4. Two indexes of "Mortgagees," labeled respectively: "Mortgagees of real property," "Mortgagees of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," "When discharged."

5. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagors," "Releases of mortgages of personal property—mortgagors," with the pages thereof divided into six columns, headed respectively: "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," "Where mortgages released are recorded."

6. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagees," "Releases of mortgages of personal property—mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released, "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

7. An index of powers of attorney, labeled "Powers of Attorney," each page divided into five columns, headed respectively: "Names of parties executing the powers," "To whom powers are executed," "Date of powers," "Date of recording," "Where powers are recorded."

8. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded."

9. An index of leases, labeled "Lessees," each page divided into four columns, headed respectively: "Names of Lessees," "Names of lessors," "Date of leases," "When and where recorded."

10. An index of marriage certificates, labeled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

11. An index of marriage certificates, labeled "Marriage certificates—Women," each page divided into six columns, headed respectively: "Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

12. An index of assignments of mortgages and leases, labeled "Assignments of Mortgages and Leases—Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignments," "When and where recorded."

13. An index of assignments of mortgages and leases, labeled "Assignments of Mortgages and Leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments assigned," "Date of assignments," "When and where recorded,"

14. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded."

15. An index of official bonds, labeled "Official Bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded."

16. An index of notices of mechanics' liens, labeled "Mechanics' Liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices when and where recorded."

17. An index to transcripts of judgments, labeled "Transcripts of Judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied."

18. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively; "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," "When attachments discharged."

19. An index of notices of the pendency of actions, labeled

"Notices of Actions," each page divided into three columns, headed respectively: "Parties to the actions," "Notices when recorded," "Where recorded."

20. An index of the separate property of married women, labeled "Separate Property of Married Women," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded."

21. An index of pre-emption claims, labeled "Pre-emption Claims," each page divided into five columns, headed respectively: "Claimants," "Notices," "When received," "Date of notices," "When and where recorded."

22. An index to the Register of births and deaths.

4237. The Recorder must keep in his office a book to be called "Certificates of Sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which in separate columns he must enter the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale.

Basis of section—Stats. 1866, p. 813.

4238. The Recorder must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is Recorder.

Basis of section—Stats. 1870, p. 798.

Judgments affecting real property—§ 4235, subdivision 7*m*.

4239. Every such certified copy of partition, from the time of the filing the same with the Recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and lienholders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant, or transfer.

Basis of section—Stats. 1870, p. 798.

4240. The Recorder may keep in the same volume any two or more of the indexes mentioned in Section 4236, but the several indexes must be kept distinct from each other, and the volume distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a

Sheriff, the name of the Sheriff and the party charged in the execution must both be inserted in the index; and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

4241. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the Recorder's office for record, the Recorder must indorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, together with the acknowledgments, proofs, and certificates, written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

Time of Reception—correction of mistake in, Donald v. Beales, April 19, 1881, 7 P. C. L. J. 402.

4242. He must also indorse upon each instrument, paper, or notice, the time when and the book and pages in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order.

4243. The Recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

Payment or tender of fees—essential pre-requisite, § 4245.

4244. If any Recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within a reasonable time after receiving the same; or,

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,

3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or,

4. Neglects or refuses to make the searches and to give the certificate required by this article; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or,

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein; he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby.

Records—offenses concerning, by officer having the custody of them, Penal Code, § 113; by any person, Penal Code, §§ 114, 115, 470, 471.

4245. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered.

4246. All books of record, maps, charts, surveys, and other papers on file in the Recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the Recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

ARTICLE VIII.

DISTRICT ATTORNEY.

§ 4256. Duties of District Attorney.
§ 4257. Legal adviser of Supervisors.
§ 4258. Must not advocate claims against his own county.

4256. The District Attorney is the public prosecutor, and must:

1. Attend the District and County Courts, and conduct, on behalf of the people, all prosecutions for public offenses;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the District or County Court, must attend upon the magistrates in cases of arrest, when required by them, and attend before and give advice to the Grand Jury, whenever cases are presented to them for their consideration;

3. Draw all indictments, defend all suits brought against the State or his county, prosecute all recognizances forfeited in the Courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the State or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the County Treasurer;

5. On the first Mondays of January, April, July, and October, in each year, file with the Auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the County Treasurer;

6. Give when required, and without fee, his opinion (in writing) to county, district, and township officers, on matters relating to the duties of their respective offices; and,

7. Keep a register of official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein;

8. Perform such other duties as are prescribed by law.

Amendment 1880 declared unconstitutional—see § 4000*n*. It substituted Superior Court for District and County Courts, provided in subd. 3 for drawing of informations as well as indictments, and in subd. 5 for monthly filing of account.

District Attorney—admissions of, as evidence, 34 Cal. 591. Assistant, duties of, 15 Cal. 426; allowance of counsel discretionary, 27 Cal. 65. Attitude of, should be impartial, 8 Cal. 435. Commissions of, are the creature of the statute, 18 Cal. 176; Legislature may release judgment despite right of District Attorney to percentage thereon, 12 Cal. 51, 55; where compromise of suit, 44 Cal. 496. Eligible, though not an admitted attorney-at-law, 32 Cal. 296. Examination of witnesses, duty in, 52 Cal. 380. Fees of, see Commissions, and § 4330*n*. Salary, see § 4330 and notes; where title contested, 28 Cal. 21. Successor, unfinished business to be turned over to, 19 Cal. 424; officer bound to know, 28 Cal. 21. Term of office, under early Acts, 16 Cal. 441.

4257. The District Attorney is the legal adviser of the Board of Supervisors. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

4258. The District Attorney, except for his own services, must not present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

ARTICLE IX.

SURVEYOR.

§ 4268. County Surveyor to make surveys, keep record of them, furnish copies, etc.
§ 4269. Surveys of lands in two counties.
§ 4270. Order for survey where title to lands in two counties disputed.
§ 4271. Courses to be run by true meridian; variation noted.
§ 4272. Surveyor to employ assistants, when.
§ 4273. Surveyor to transmit to Surveyor-General plats and field notes, and give information.
§ 4274. To assist Surveyor-General, when.
§ 4275. Disinterested person, when to act in place of County Surveyor.

4268. The Surveyor must make any survey that may be required by the order of Court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law.

County Surveyor—plat of survey made by, when alone admissible in evidence, 31 Cal. 140; party not, when may testify, 31 Cal. 140; is one of agents of State for sale of swamp and overflowed lands, and must not be interested in purchase of same, 48 Cal. 194; nor become the purchaser of State lands, 52 Cal. 373.

Survey—private, no legal evidence, 11 Cal. 133; descriptions in, when not binding, etc., 30 Cal. 430.

Order of Court—see § 4270.

4269. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the Surveyor of any county in which any part of such land is situated, and on such application being made the Surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

4270. When land, the title to which is in dispute before any Court, is divided by a county line, the Court making an order of survey may direct the order to the Surveyor of any county in which any part of the land is situated.

Basis of section—and of rest in article, Stats. 1850, p. 170.

4271. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

4272. If a party for whom a survey is made does not furnish the chainmen and markers, the Surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistance necessarily employed.

4273. Each County Surveyor, immediately after making any survey, except surveys of city or town lots, must make out a copy of the field notes and plat, and transmit the same to the Surveyor General, indicating plainly upon the plat at what point of any line any river or stream or county line is touched or crossed. He must communicate to the Surveyor General such information concerning surveys made by him, and other matters connected with the duties of his office, as may be required.

4274. Each County Surveyor must, when required, aid and assist the Surveyor General in making surveys within the county.

4275. When the County Surveyor is interested in any land, the title to which is in dispute and a survey thereof is necessary, the Court must direct the survey to be made by some disinterested person, and the person so appointed is for that purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the County Surveyor would be entitled to for similar services.

ARTICLE X.

CORONER.

§ 4285. Coroner to hold inquest.
§ 4286. Coroner to bury body, when; expenses of interment.
§ 4287. To deliver to County Treasurer, etc., property found on body.
§ 4288. Statement before auditing accounts of Coroner.
§ 4289. Justice of Peace to act as Coroner in certain cases.
§ 4290. Coroner to discharge duties of Sheriff, when.

4285. The Coroner must hold inquests as prescribed in Chapter II, Title XII, Part II of the Penal Code.

Holding inquests—judicial functions of Coroner in, 44 Cal. 452.

Prescribed in Penal Code—Coroners' inquests and duties of Coroners, Penal Code, §§ 1510-1519.

4286. When an inquest is held by the Coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay

the necessary expenses of the burial, the expenses are a legal charge against the county.

4287. The Coroner must, within thirty days after an inquest upon a dead body, deliver to the County Treasurer or the legal representatives of the deceased any money or other property found upon the body.

4288. Before auditing or allowing the accounts of the Coroner, the Supervisors must require him to file with the Clerk of the Board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;
2. The disposition made of such property.

4289. If the office of Coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any Justice of the Peace of the county, with the like authority and subject to the same obligations and penalties as the Coroner.

4290. In the cases specified in Article IV of this chapter, the Coroner must discharge the duties of Sheriff.

Coroner as Sheriff—§ 4191.

Coroner as ex officio Public Administrator—Stats. 1872, p. 756.

Post mortem examinations—and chemical analyses, Stats. 1872, p. 81.

Coroners in San Francisco—Stats. 1872, p. 403; amd. by Stats. 1874, p. 908; 1876. p. 397.

Section 4292 added by unconstitutional amendment 1880—see § 4000*n*. Embodied provisions of Stats. 1872, p. 81, which provided that Coroner could subpœna physician or chemist for post mortem examination or analysis.

ARTICLE XI.

ASSESSORS, TAX COLLECTORS, SCHOOL SUPERINTENDENTS, PUBLIC ADMINISTRATORS, AND COMMISSIONER OF HIGHWAYS.

§ 4300. Duties of Assessor.
§ 4301. Duties of Tax Collector.
§ 4302. Duties of School Superintendents.
§ 4303. Duties of Public Administrator.
§ 4304. Duties of Commissioner of Highways and Road Overseers.

4300. The Assessor must perform such duties as are prescribed in Title IX, Part III of this Code.

Duties of Assessor—see §§ 3627-3663, 3820-3830, 3839-3862 and notes.

4301. The Tax Collector must perform such duties as are prescribed in Title IX, Part III of this Code.

Duties of Tax Collector—see §§ 3746-3810 and notes.

Tax Collector generally—§ 3746*n*.

4302. The School Superintendent must perform such duties as are prescribed in Title III, Part III of this Code.

Duties of School Superintendent—§§ 1543-1553.

4303. The Public Administrator must perform such duties as are prescribed in Chapter XIII, Title XI, Part III, of THE CODE OF CIVIL PROCEDURE.

Public Administrator—see Code Civ. Proc., §§ 1726-1743; action between sureties, 55 Cal. 106; substitute for, Stats. 1872, p. 796.

4304. The Commissioner of Highways and Road Overseers must perform such duties as are prescribed in Title VI, Part III, of this Code.

Attempted repeal of section—by unconstitutional amdt. 1880, see § 4000*n*. But provisions as to Commissioners of Highways omitted from article on Highway officers, as amd. 1880, comprising §§ 2646-2653.

ARTICLE XII.

CONSTABLES, JUSTICES OF THE PEACE, AND INFERIOR OFFICERS.

§ 4314. Constables to attend Justices' Courts.
§ 4315. Governed by the law prescribing Sheriffs' duties.
§ 4316. Duties of Justices of the Peace.

4314. Constables must attend the Courts of Justices of the Peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a Justice of the Peace of such county or by any competent authority.

Amendment 1880 declared unconstitutional—see § 4000*n*. It substituted "Court" for "Courts" and "the Justice" for "Justices."

Constable—deed of, not reciting judgment, is void, 25 Cal. 230. Deputies, may appoint, 4 Cal. 188; and see §§ 876, 877. Process, power to execute out of township, 15 Cal. 297; 17 Cal. 294.

Justices' Courts—see Code Civ. Proc., §§ 85-115, 832-926.

Validating Act—legalizing official acts of Constables performed during part of 1874, see Stats. 1874, p. 700.

4315. All the provisions of Article IV of this chapter, except the fourth and sixth subdivisions of Sections 4176, apply to Constables and govern their powers, duties, and liabilities.

Provisions applicable—see §§ 4175-4193.

4316. Justices of the Peace must perform such duties as are prescribed in Title XI, Part II, of THE CODE OF CIVIL PROCEDURE, and such other duties as are prescribed by law.

Justices of the Peace—and Justices' Courts in general, Code Civ. Proc., §§ 110–115; proceedings in Justices' Court, Code Civ. Proc., §§ 833–926. Judicial officers, held to be, see § 4110a.

CHAPTER IV.

Salaries and Fees of Office.

§ 4328. Salaries of County Judges and District Attorneys.
§ 4329. Salary of County Judges fixed.
§ 4330. Salary of District Attorneys fixed.
§ 4331. Continuing Acts fixing salaries and fees of county officers.
§ 4332. Officer to perform service when fees are paid.
§ 4333. No charge to be made in proceedings on habeas corpus.

4328. The salaries of County Judges and District Attorneys must be paid monthly from the County Treasury, on the warrants of the County Auditor. Their salaries are fixed in the succeeding sections of this chapter.

Amendment 1880 declared unconstitutional—see § 4000*n*. It provided for monthly payment of salaries of county officers from Salary County Fund, and had special provision for monthly payment from State Treasury of State's share of salary of Superior Judges (pursuant to Const. Cal. 1879, art. 6, § 17.)

County Judges—see § 4110*n*.

4329. The salaries of County Judges are as follows:

1. Of San Francisco, five thousand dollars;
2. Of Sacramento, three thousand dollars;
3. Of Alameda, twenty-five hundred dollars;
4. Of Nevada and Yuba, twenty-four hundred dollars;
5. Of Amador, Los Angeles, Napa, Placer, San Joaquin, Santa Clara, Solano, and Sonoma, two thousand dollars;
6. Of Butte, Colusa, Contra Costa, El Dorado, Marin, Mendocino, Merced, Siskiyou, Stanislaus, Sutter, Tehama, and Yolo, fifteen hundred dollars;
7. Of Calaveras, Fresno, Humboldt, Kern, Mariposa, Monterey, Plumas, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, and Tuolumne, twelve hundred dollars;
8. Of Alpine, Klamath, Lake, Lassen, San Diego, San Mateo, Trinity, and Tulare, one thousand dollars; and,
9. Of Del Norte, Inyo, Mono, and San Bernardino, eight hundred dollars.

Amendment 1880 declared unconstitutional—see § 4000*n*. It fixed annual salaries of Superior Court Judges, pursuant to Const. Cal. 1879, art. 6, § 17. For such salaries, see §§ 737, 738 and note.

County Judges—see § 4110*n*.

Local Acts—now obsolete, (under Const. Cal. 1879,) modified provisions of section, in various counties.

4330. The annual salaries of District Attorneys are as follows:

First—Of San Francisco, five thousand dollars.

Second—Of Sacramento, thirty-six hundred dollars.

Third—Of Los Angeles, three thousand dollars.

Fourth—Of San Joaquin, Santa Clara and Alameda, twenty-five hundred dollars.

Fifth—Of Butte, seventeen hundred dollars.

Sixth—Of Nevada, two thousand dollars; and of Colusa, eighteen hundred dollars.

Seventh—Of Sonoma, eighteen hundred dollars.

Eighth—Of El Dorado, Placer, Amador, Marin, Contra Costa, Tuolumne, Napa, Yolo, Yuba, and Santa Cruz, fifteen hundred dollars.

Ninth—Of Mariposa, Merced, San Mateo, Shasta, Siskiyou, Stanislaus, Tehama, Fresno, Kern, Mendocino, San Luis Obispo, Santa Barbara, Tulare, San Diego, and Plumas, twelve hundred dollars.

Tenth—Of Monterey, Sutter, Trinity, Sierra, and Calaveras, one thousand dollars.

Eleventh—Of Inyo and Lassen, eight hundred dollars.

Twelfth—Of Del Norte, Humboldt, Klamath, Lake, and San Bernardino, seven hundred dollars.

Thirteenth—Of Alpine, six hundred dollars.

Fourteenth—Of Mono, five hundred dollars. [In effect March 28, 1872.]

Date of passage of section—see Stats. 1872, p. 653.

Effect of section on fees—does not repeal prior statutes allowing fees in addition to salaries, 45 Cal. 46.

Fees of District Attorneys—preserved, 45 Cal. 46; not earned for prosecuting party convicted of violating city ordinance, 47 Cal. 478; percentage on judgments for assessments for reclamation of swamp lands, 52 Cal. 190; in Santa Cruz County, Stats. 1872, p. 449; in Butte, Inyo, Placer and Shasta Counties, Stats. 1872, p. 799; in Sutter County, Stats. 1876, p. 599.

Local Acts altering salaries of District Attorneys—in various counties. Amador, Stats. 1876, p. 370. Butte, Stats. 1874, p. 733; amd. by Stats. 1878, p. 248. Calaveras, Stats. 1876, p. 141. Colusa, Stats. 1874, p. 873. Contra Costa, Stats. 1876, p. 91. El Dorado, Stats. 1878, p. 78-9. Humboldt, Stats. 1878 p. 34. Inyo, Stats. 1874, p. 177. Lake, Stats. 1876, p. 599; and see Stats. 1878, p. 256. Los Angeles, Stats. 1878, p. 574. Marin, Stats. 1874, p. 433. Mariposa, Stats. 1874, p. 83. Merced, Stats. 1874, p. 660; amd. by Stats. 1878, p. 137. Modoc, Stats. 1874, p. 124; 1878, p. 147. Monterey, Stats. 1878, p. 863. Napa, State, 1874, p. 392. Nevada, Stats. 1878, pp. 551, 552. Sacramento, Stats. 1874, p. 909; and see Stats. 1872, p. 863; 1874, pp. 204, 794 San Benito, Stats. 1874, p. 95. San Bernardino, Stats. 1876, p. 389. San Diego, Stats. 1876, p. 586. San Joaquin, Stats. 1874, p. 575. San Luis Obispo, Stats. 1876, p. 608; 1878, p. 451. Santa Clara, Stats. 1874, p. 610; Stats. 1876, p. 35, amd. by Stats. 1878, p. 288. Santa Cruz, Stats. 1876, p. 576. Solano, Stats. 1872, p. 624. Sonoma, Stats. 1874. p. 382. Stanislaus, Stats. 1874, p. 277. Tuolumne, Stats. 1876, p. 45. Ventura, Stats. 1874, p. 618. Yolo, Stats. 1874, p. 420; 1876, p. 170.

Assistants—of District Attorney in San Francisco, Stats. 1874, p. 602; 1878, p. 70.

4331. Nothing in this Code not contained in this chapter affects any of the provisions of the statutes relating to the compensation, salaries, or fees of county or township officers; but all such statutes are recognized as continuing in force, notwithstanding the provisions of this Code, except so far as they are affected by or are inconsistent with the provisions of this chapter.

Section continues in force San Francisco Act—regulating fees of officers and salary of Sheriff, 50 Cal. 118.

Fees and salaries—General Act, Stats. 1870, p. 148, amd. by Stats. 1870, pp. 677, 680; 1872, pp. 178, 188, 219; 1878, p. 134. Local Acts in the various counties: Alameda, Stats. 1872, p. 720; 1874, pp. 90, 185, 601; 1876, pp. 127, 166; 1878, p. 950. Alpine, Stats. 1872, p. 703; 1874, p. 236; 1878, p. 372. Amador, General Act and Stats. 1876, p. 370. Butte, Stats. 1872, pp. 233, 270, 709, 799; 1874, pp. 170, 508, 733; 1876, pp. 753, 906; 1878, pp. 248, 287, 564, 683. Calaveras (instead of General Act), Stats. 1870, p. 139 (supplemented or amended by Stats. 1872, p. 177, 385; 1874, p. 12); Stats. 1872, p. 910; 1876, p. 141; 1878, p. 592. Colusa, Stats. 1872, p. 98; 1874, p. 873; 1878, p. 782. Contra Costa, Stats. 1876, pp. 84, 91, 529; 1878, p. 269. Del Norte, General Act and Stats. 1876, p. 507. El Dorado, Stats. 1870, p. 198 (amd. by Stats. 1872, pp. 412, 592, 894, and Stats. 1874, p. 710); Stats. 1872, pp. 377, 793; 1874, pp. 5, 825; 1878, p. 269. Fresno, Stats. 1874, pp. 236, 349; 1876, pp. 151, 363; 1878, p. 255. Humboldt, Stats. 1872, pp. 169, 797; 1874, pp. 109, 755; 1876, p. 81. Inyo, Stats. 1872, p. 799; 1874, pp. 177, 236, 510; 1876, p. 81; 1878, pp. 157, 256, 372. Kern, Stats. 1874, pp. 45, 236, 349; 1876, pp. 151, 172, 363; 1878, pp. 255, 559. Lake, Stats. 1872, p. 441; 1876, p. 599; 1878, p. 256. Lassen, Stats. 1872, p. 189; 1878, p. 683. Los Angeles, Stats. 1870, p. 380; 1872, pp. 37, 62, 158; 1874, pp. 342, 348, 616; 1876, pp. 130, 570; 1878, p. 574. Marin, Stats. 1874, pp. 212, 433. Mariposa, Stats. 1874, p. 83; 1876, p. 508. Mendocino, Stats. 1874, pp. 174, 539; 1878, p. 183. Merced, Stats. 1874, p. 660; 1876, p. 508; 1878, pp. 107, 137. Modoc, Stats. 1874, p. 124; 1878, pp. 140, 454. Mono, Stats. 1874, p. 708. Monterey, Stats. 1872, pp. 316, 419; 1874, p. 203; 1878, p. 863. Napa, Stats. 1870, p. 368; 1872, p. 437; 1874, pp. 108, 158, 392; 1878, p. 551. Nevada, Stats. 1870, p. 142 (amd. by Stats. 1872, p. 843); Stats. 1876, p. 404; 1878, p. 551. Placer, Stats. 1870, p. 805; 1872, p. 799; 1874, p. 702; 1878, p. 268. Plumas, Stats. 1872, p. 733; 1874, p. 382; 1878, p. 547. Sacramento, Stats. 1874, p. 204, supplemented by Stats. 1874, pp. 713, 794; see further Stats. 1874, pp. 863, 909. San Benito, Stats. 1874, p. 95. San Bernardino, Stats. 1866, p. 822; 1870, p. 219; 1872, p. 490 (amd. by Stats. 1874, p. 130); 1874, pp. 101, 616; 1876, p. 389; 1878, p. 80. San Diego, Stats. 1872, p. 191; 1874, pp. 101, 443, 616; 1876, pp. 553, 586; 1878, p. 128. San Francisco (City and County): Fees, besides §§ 2 and 22 of General Act, see Stats. 1855, p. 81 (amd. by Stats. 1855, p. 212; 1858, p. 231, superseding Stats. 1856, p. 83); 1864, p. 365; 1866, pp. 66, 122; 1872, pp. 46, 93, 403, 776; 1874, p. 908; Salaries, see Stats. 1852, p. 200; 1853, p. 198; 1855, p. 208; 1857, p. 15; 1858, p. 239; 1859, pp. 36, 89, 92; 1860, p. 309; 1861, pp. 554, 559, 569; 1862, pp. 138, 239; 1864, pp. 114, 161, 515; 1866, p. 625; 1870, p. 122; 1872, p. 653; 1878, p. 335, 1023. San Joaquin, Stats. 1874, pp. 575, 692; 1878, p. 782. San Luis Obispo, Stats. 1870, p. 437 (amd. by Stats. 1872, p. 425; 1876, p. 912); 1874, p. 618; 1876, p. 608; 1878, pp. 451, 701. San Mateo, Stats. 1874, pp. 479, 779; 1878, p. 983. Santa Barbara, Stats. 1874, p. 618; 1876, p. 212. Santa Clara, Stats. 1872, pp. 212, 859; 1874, pp. 102, 230, 610; 1876, pp. 35, 363, 402; 1878, pp. 288, 426. Santa Cruz, Stats. 1872, p. 391; 1876, p. 516; 1878, pp. 155, 564. Shasta, Stats. 1872, p. 799; 1874, pp. 168, 180. Sierra, Stats. 1866, p. 272; 1868, p. 448; 1870, p. 285; 1874, p. 185. Siskiyou, Stats. 1870, p. 249, supplemented by Stats. 1874, pp. 188, 719; further see Stats. 1874, p. 755. Solano, Stats. 1872, p. 624; 1874, p. 869; 1876, p. 56; 1878, p. 536. Sonoma, Stats. 1872, p. 583; 1874, p. 228; Stats. 1874. pp. 382, 720 (amd. by Stats. 1876, pp. 576, 726); 1878, pp. 129, 328. Stanislaus, Stats. 1872, p. 183; 1874, pp. 277, 448, 537; 1878, p. 1001. Sutter, General Act, and § 21 of Act in Stats. 1876, p. 693. Tehama, Stats. 1872, pp. 755, 756; 1874, p. 796; 1876, p. 232. Trinity, Stats. 1872, p. 380; 1874, pp. 184, 593. Tulare, Stats. 1874, pp. 45, 60, 349

1876, pp. 156, 172, 363; 1878, p. 559. Tuolumne, Stats. 1870, p. 525; 1876, p. 45. Ventura, Stats. 1872, p. 484; 1874, pp. 365, 618. Yolo, Stats. 1874, p. 420 (amd. by Stats. 1876, pp. 120, 566); Stats. 1878, p. 637. Yuba, Stats. 1872, p. 36; 1874, pp. 109, 153; 1876, p. 522; 1878, p. 738.

4332. The officers mentioned in this Title are not in any case, except for the State or county, to perform any official services, unless upon the prepayment of the fees prescribed for such services, except as in the succeeding section provided by law; and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

Fees—and salaries, § 4331*a*.

4333. No fee or compensation of any kind must be charged or received by any officer for duties performed or services rendered in proceedings upon habeas corpus.

CHAPTER V.

Other County Charges.

§ 4343. County charges to be audited.
§ 4344. Enumeration of county charges.
§ 4345. Costs on removal of criminal actions.
§ 4346. Proceedings in collection of such costs.
§ 4347. Actions to which such provisions apply.

4343. Accounts for county charges of every description must be presented to the Board of Supervisors to be audited, as prescribed in Article III, [Chapter II] Title II, Part IV, of this Code.

Presenting accounts for county charges — to be audited, see Article III of Chapter II, and especially §§ 4072-4074.

4344. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this Title;

2. The compensation of the District Attorney, and all expenses necessarily incurred by him in criminal cases arising within the county;

3. The compensation allowed by law to Sheriffs and Constables for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for services of subpœna issued by District Attorneys, and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law;

4. The expenses necessarily incurred in the support of persons charged with or convicted of crimes and committed therefor to the County Jail;

5. The sums required by law to be paid to Grand Jurors and indigent witnesses in criminal cases;

6. The accounts of the Coroner of the county for such services as are not provided to be paid otherwise;

7. All charges and accounts for services rendered by any Justice of the Peace for services in the examination of persons charged with crime not otherwise provided for by law;

8. The necessary expenses incurred in the support of County Hospitals, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

9. The contingent expenses necessarily incurred for the use and benefit of the county;

10. Every other sum directed by law to be raised for any county purpose under the direction of the Board of Supervisors, or declared to be a county charge;

11. The salary of the Commissioner of Highways must be paid at the close of each quarter.

Amendment 1880—declared unconstitutional, see § 4000*n*. It omitted subds. 2, 3 and 11.

4345. When a criminal action is removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the indictment was found. [In effect February 28, 1874.]

4346. The Clerk of the county to which such action is removed shall certify the amount of costs allowed and certified by the Court to the Auditor of his county, and such Auditor shall audit the same and draw his warrants therefor upon the Treasurer of the county from which such action was removed, and such Auditor shall forward to said Treasurer and Auditor of the county from which said action was transferred as aforesaid, a certified copy of the total amount of costs allowed by the Court, giving each item as certified to him by the County Clerk and the Court; and the Auditor receiving such certified copy of said costs allowed, shall enter the same in his books as a charge against the Treasurer of his county, and the County Treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the General Fund of said county; or if at the time of presentation there is not sufficient moneys in the said General Fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the Auditor of the county where the indictment was found. [In effect February 28, 1874.]

4347. Sections four thousand three hundred and forty-five and four thousand three hundred and forty-six of this Code shall apply to all criminal actions which have been or may be removed for trial since the first day of January, eighteen hundred and seventy-three. [In effect February 28, 1874.]

Section 4348 added by void Amendment 1880—see § 4000*n*. It provided that full fees and commissions of County Surveyor, Coroner, Justices of the Peace and Constables should be those prescribed by law, and fixed compensation of Supervisors.

TITLE III.

The Government of Cities.

CHAPTER I. CITIES AS BODIES CORPORATE.
II. EXECUTIVE POWERS.
III. LEGISLATIVE POWERS.
IV. JUDICIAL POWERS.
V. CERTAIN STATUTES RELATING TO CITIES AND TOWNS AND EXISTING CORPORATIONS CONTINUED.

CHAPTER I.

Cities as Bodies Corporate.

§ 4354. City is body politic and corporate; general and special powers.
§ 4355. Distribution of powers.
§ 4356. City declared by Legislature.
§ 4357. Boundaries, how changed.
§ 4358. Petition to Supervisors. (Repealed.)
§ 4359. Undertaking for expenses of election. (Repealed.)
§ 4360. Supervisors to order an election. (Repealed.)
§ 4361. Notice of election, etc. (Repealed.)
§ 4362. Ordinance approving such annexation. (Repealed.)
§ 4363. Order of Supervisors, etc. (Repealed.)
§ 4364. Expenses of election, how paid. Repealed.)
§ 4365. Certified copies of ordinance to be transmitted and filed. (Repealed.)
§ 4366. Act to fix time of the first election.
§ 4367. Notice of election and canvass of returns.
§ 4368. Who are entitled to vote at city elections.
§ 4369. Common Council to provide for election and appointment of city officers.
§ 4370. Elective officers of cities.
§ 4371. Direct taxes limited.
§ 4372. Condemnation of private property for city use.
§ 4373. Vacancies in office.
§ 4374. Official oaths and bonds.

4354. A city is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this Title or in special laws.

Title inapplicable—to municipal corporations existing at the time it went into effect, 47 Cal. 127, 128.

System of town governments not established—by Legislature, as required by Const Cal. 1849, § 4, art. 11, 48 Cal. 280, 320.

City—what constitutes, § 4356.

Municipal corporation—see § 4356a.

4355. Every city has legislative, executive, and judicial power. Its legislative power is vested in a Common Council; its executive power in a Mayor and his subordinate officers; and its judicial power in a Police Court.

Municipal authorities—power of, 45 Cal. 11; must strictly follow statute under which they are empowered to act, 49 Cal. 571; one of, when should not join in conveyance of land of city, 44 Cal. 106.

4356. Every subdivision of a county not exceeding in extent six square miles, with not less than two thousand inhabitants, with its metes and bounds fixed and defined, and declared by Act of the Legislature to be a "municipal corporation," is a city with the powers conferred by this Title.

Incorporated cities—character and liabilities of, 45 Cal. 36.

Municipal corporation—power of, see 53 Cal. 247; is subordinate subdivision of State Government under complete control of Legislature (so long as obligation of contracts not impaired), 42 Cal. 542, 557; discretionary power of Legislature to appropriate moneys of, in payment of equitable claims of individuals, 42 Cal. 450; or to compel payment of demands (as for opening or extension of streets) for which no legal liability, 41 Cal. 525, 529-30; member of Board of Trustees of, not justified in joining in conveyance of land by the city to a corporation of which he is a stockholder or Director, where Board has discretionary power as to the extent of the conveyance, 44 Cal. 106.

4357. The boundary of a city may be changed by an Act of the Legislature, on petition of a majority of the Common Council, presented in pursuance of a city ordinance, or, as hereinafter provided, by the Board of Supervisors.

4358. Sections four thousand three hundred and fifty-eight to four thousand three hundred and sixty-five, both inclusive, of the Political Code, are hereby repealed. [In effect March 28, 1874.]

4366. The Act of the Legislature declaring a city to be a "municipal corporation" must fix a day for the first election of city officers, and fix the number of members of the "Common Council" to be elected for the first year.

4367. Notice of the first election of city officers must be given by the County Judge of the county, by publishing the same in a newspaper published in the city for four weeks successively, designating the officers to be elected, the polling places, and the officers of election. The returns must be made to the County Judge, who must count and declare the vote, and issue certificates of election.

County Judge—see § 4110a.

4368. The qualified electors of the city who have resided within the city limits for thirty days next preceding the election are qualified to vote at all city elections.

4369. The Common Council must, during the first year, by ordinance, fix the term of office of all elective officers and the time when they must be elected, and provide for the appointment of other necessary officers, including City Clerk, City Attorney, and Treasurer, and fix their terms and amount of their bonds. [Approved March 30; in effect July 6, 1874.]

4370. The elective officers of cities are: A Mayor, a Marshal, a Police Judge, Assessor and Collector of taxes, and a Common Council consisting of not less than three members. They must be electors of the city, and qualify by taking the statutory oath of office, and, except the first officers elected, hold office for a term to be fixed by the Common Council, not exceeding two years. [Approved March 30; in effect July 6, 1874.]

4371. The direct taxes imposed by the Common Council in any one year must not exceed two per centum of the valuation of property within the city.

4372. Whenever it becomes necessary for the city to take private property for the purposes of laying out or altering streets or alleys, and the Council cannot agree with the owner thereof as to the price to be paid, the Council may direct proceedings to be taken under Title VII, Part III of the Code of Civil Procedure, to procure the same.

Eminent Domain—Code Civ. Proc., §§ 1237-1263.

4373. If any person elected to a city office removes from the city, absents himself for more than thirty days without leave from the Council, or fails to qualify within ten days after election, his office is vacant.

Basis of section—Stats. 1850, p. 91.

4374. All city officers, before entering upon their duties, must take the oath of office. The Marshal, Attorney, Clerk, Assessor, Collector, and Treasurer must also give a bond, with sureties to be approved by the Mayor, payable to the corporation by its corporate name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and a like bond may be required of any officer whose office is created by an ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and, upon his failure so to do, his office must be deemed vacant. [Approved March 30; in effect July 6, 1874.]

Before amendment 1874—word "collector" omitted, and section based on Stats. 1850, p. 91.

CHAPTER II.

Executive Powers.

§ 4385. Executive officers of a city.
§ 4386. Powers of Mayor.
§ 4387. Accounts and demands, how audited and paid.
§ 4388. Mayor President of the Common Council.
§ 4389. Duties of City Marshal.
§ 4390. Duties of Assessor.
§ 4391. Duties of City Attorney.
§ 4392. Duties of Treasurer.
§ 4393. Duties of Clerk.

4385. The executive officers of a city are the Mayor, Marshal, and such officers for the assessment, collection, auditing, safe keeping, and disbursing the revenue and keeping the records and journals of the city, as the Common Council may provide.

4386. The Mayor has power:

1. To nominate, and with the consent of the Common Council, to appoint all non-elective officers of the city provided for by the Common Council, including City Attorney, Secretary of the Council, and City Treasurer;

2. To suspend, and with the consent of the Common Council, to remove any non-elected officer, stating in the suspension or removal the cause thereof;

3. To cause the ordinances of the city to be executed, and to supervise the discharge of official duty by all subordinate officers;

4. To communicate to the Common Council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city, with such recommendations as he may deem proper;

5. To recommend to the Common Council such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he deems expedient;

6. To approve all ordinances of the Common Council adopted by it, and in case the same do not meet his approbation, to return the same, with his objections, within five days after he receives the same. [Approved March 30; in effect July 6, 1874.]

Before amendment 1874—subd. 1 contained Assessor and Collector of Revenue in list of included officers. Section was then based on Stats. 1850, p. 87.

4387. All accounts and demands against said city must be audited by the President of the Common Council, and no money must be drawn from the City Treasury unless upon the certificate of the President, by order of the Council. The certificate must be drawn upon the Treasurer of the city, and must specify the fund out of which the same is payable. The Treasurer must pay the same out of any money in his hands belonging to such fund.

Basis of section—Stats. 1850, p. 87.

4388. The Mayor is the President of the Common Council, must sign the journals thereof, decide by his voice all tie votes, must sign the warrants on the City Treasurer, and is the keeper of the City Seal.

4389. The City Marshal, in addition to the duties prescribed by the Common Council, must execute and return all process issued by the Police Judge, or directed to him by any legal authority, and attend upon the Police Court regularly. He may appoint one or more deputies; and must arrest all persons guilty of a breach of the peace or for the violation of any city ordinance, and bring them before the Police Judge for trial, and has superintending control over the city police; and, until otherwise provided by ordinance, must perform all duties of Collector of city taxes.

Police Judge—and Court, § 4424 *et seq.*

4390. The Assessor, in addition to the duties prescribed by the Common Council, must make out, within such time as the Common Council orders, a correct list of all the taxable property within the city limits, with the valuation thereof, which list, certified by him, must be returned to the Common Council. The mode of making out the list and of ascertaining the value of property, and of collecting all taxes, is the same as prescribed in this Code for assessing and collecting the State tax.

Basis of section—and of next, Stats. 1850, p. 87.

4391. The City Attorney must attend to all suits, matters, and things in which the city may be legally interested; to give his advice or opinion in writing whenever required by the Mayor or Common Council, and do and perform all such things touching his office as by the Common Council may be required of him.

4392. The Treasurer must receive all moneys that come to the city, either from taxation or otherwise, and pay the same out on the certificate of the President of the Common Council, and do and perform all other acts as are prescribed

for him by the Common Council. He must, on the first days of January, April, July, and October of each year, make out and present to the Mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor must cause to be published.

Treasurer—prohibited by city ordinance from paying claims against the city before they have been audited and approved by the Common Council, cannot be compelled, by mandamus, to previously pay such claims. 49 Cal. 512.

4393. The City Clerk is Clerk of the Common Council; must keep the journal of their proceedings and all records of the city; he must keep the accounts of the city, and countersign all warrants on the City Treasurer; keep a true account thereof and of the financial condition of the city, and do such other things as the Common Council may by ordinance provide.

CHAPTER III.

Legislative Powers.

§ 4403. Common Council, how constituted.
§ 4404. Wards, boundaries and number of
§ 4405. First meeting, for organization.
§ 4406. Quorum.
§ 4407. Control over members. Rules, journals and publicity of proceedings.
§ 4408. Additional powers of Common Council.
§ 4409. Street improvements, how made.
§ 4410. To grant authority to gas and water companies.
§ 4411. Reservations by cities.
§ 4412. Contract for gas and water.
§ 4413. Restrictions and conditions to be imposed.
§ 4414. Ordinance, how vetoed, and how passed over veto.

4403. The Common Council consists of not less than three citizens of the city, elected one from each of the wards. The Mayor is the presiding officer thereof.

4404. The Common Council has power to divide the city into a convenient number of wards, fix the boundaries thereto, and may change the same from time to time as they see fit, having regard to the number of white male inhabitants, so that each ward contains as near as may be the same number of inhabitants. The number of wards of any city must not exceed the number of Councilmen to which the city is entitled; and when the city has been so divided, the Councilmen must be elected from the several wards respectively, according to the number of inhabitants.

Basis of section—and of next two, Stats. 1850. p. 37.

4405. The members of the Common Council must assemble within five days after their election, and choose some suitable person as Clerk. In case of the absence of the Mayor they may elect a President pro tempore, who has all the powers and must perform all the duties of President. They must, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time.

4406. A majority of the members of the Common Council constitutes a quorum to do business; but a less number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the Council may, by ordinance, prescribe.

4407. The Common Council is the judge of the qualification, elections, and returns of their own members and the other officers elected under the provisions of this title. They may determine contested elections; they may provide rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and, with the concurrence of two-thirds of their number, expel any member, but not a second time for the same cause; they must keep a journal of their proceedings, and at the desire of any member must cause the yeas and nays to be taken and entered on any question; and their proceedings must be public.

4408. The Common Council has power:

1. To create the offices of City Clerk, City Attorney, Assessor, and Collector, and such other offices as may be necessary, and prescribe their duties and fix their compensation.
2. To establish and fix the salaries of the Mayor, Police Judge, and other city officers, and also fix a tariff of fees for the officers entitled to such, designating the fees allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by the Common Council.
3. To manage the finances and property of the city.
4. To regulate the streets, wharves, piers, and chutes in the city, and the use thereof.
5. To establish or authorize slaughter houses and markets, and regulate the same.
6. To provide for lighting, watering, and cleaning the city, and protecting it against fire.
7. To license and regulate hacks, cabs, carts, omnibuses, railway cars, and all other vehicles, butchers, porters, pawnbrokers, peddlers, showmen, and junk shop keepers, theaters, and all other places of public amusement.
8. To provide for licensing any or all business not prohibited by law, and fix the amount of license tax for the same.
9. To regulate the keeping and use of animals, and the keeping and use of gunpowder and other dangerous substances.
10. To suppress gaming, gambling houses, and other disorderly houses, nuisances of every description, and all kinds of vice and immorality.
11. To prohibit the burial of the dead within the city, except at such places and in such manner as the Common Council may determine.
12. To establish and regulate a Police Department.
13. To establish and regulate a Fire Department.

14. To impose penalties for the violation of ordinances; but no single penalty must exceed a fine of five hundred dollars, or imprisonment for ten days, or both.

15. To impose and appropriate fines, penalties, and forfeitures for breaches of ordinances.

16. To make by-laws and ordinances not repugnant to the Constitution and the laws of the United States or of this State.

17. To require any land or building to be cleansed at the expense of the owner or occupant, and upon his default, may do the work and assess the expense upon the land or building.

18. To establish a Board of Health to prevent the introduction and spreading of disease, or to ordain and adopt for the government of the city the "Quarantine" or "Health Regulations," provided by this Code for San Francisco or Sacramento.

19. To levy and collect taxes, to lay out, extend, alter, or widen streets and alleys, and make appropriations for any object of city expenditures.

20. To erect and maintain Poor Houses and Hospitals, and pass such by-laws and ordinances for the regulation of the Police as they may deem necessary. All ordinances must be published in the manner prescribed by the Common Council.

Basis of first two subdivisions of section—Stats. 1850, p. 87.

SUBDIVISION 3. **Property of the city**—When lease of realty void, 43 Cal. 502.

SUBDIVISION 6. **Water for city**—Action in excess of authority, 45 Cal. 11.

SUBDIVISION 10. **All kinds of vice and immorality**—may be suppressed, and under similar provision municipal legislative body may by ordinance punish uttering of profane language, 43 Cal. 480.

SUBDIVISION 16. **By-Laws**—must be reasonable, 55 Cal. 212.

SUBDIVISION 19. **Opening streets**—is a municipal purpose, 41 Cal. 525.

4409. Whenever the owners of a major part of the property fronting on any street or avenue desire to improve such street by paving the same, or constructing sewers, or otherwise, the Mayor and Council may make such improvement at the expense of all the owners of property on the street, which expense must be in proportion to the number of feet owned by each.

Basis of section—Stats. 1850, p. 87.

Improvement of streets—in city of Oakland, discretionary, supervisory, and appellate powers of City Council, 52 Cal. 270; in San Francisco, under Const. Cal. 1879, 54 Cal. 245.

Assessments for street work must be collected in advance—under Const. Cal. 1879, § 19, art. 11, held self-executing in 54 Cal. 245.

4410. The Common Council, by ordinance, approved by the Mayor, may grant to any gas or water company the privi-

lege of laying down pipes in the streets and alleys of such city for supplying gas and water for the streets and buildings thereon, for a term not exceeding twenty-five years.

Basis of section—and of rest (except last) in chapter, Stats. 1870, p. 815.

4411. In exercising the authority mentioned in preceding section, the Common Council must reserve the right to grant similar privileges to other companies, and require the laying down of the pipes to be under the reasonable direction of the city authorities, and to be so laid as to do no injury to the proper use of the paving, planking, or macadamizing of the streets and alleys, nor to private property situate thereon.

Privilege granted to any individual or company—under certain conditions, Const. Cal. 1879, § 19, art. 11.

4412. The Common Council may contract with gas and water companies for supplying the streets and public buildings with all gas and water necessary for their proper use; the rates to be paid therefor must not be fixed for a term exceeding five years, and the city authorities must reserve the right to abrogate such contract whenever gas or water is offered to be supplied at two-thirds of such fixed contract price.

4413. In granting authority to lay down pipes, and in contracting for gas and water, the Common Council must impose such restrictions and conditions, and provide for such locations and construction of gas and water works and pipes as to work the least possible public or private inconvenience, and provide for enforcing such restrictions and conditions.

4414. Every ordinance passed by the Common Council must, before it becomes effective, be presented to the Mayor for his approbation. If he approve it, he must sign it; if not, he must return it, with his objections, in writing, to the Common Council, who must cause the same to be entered upon its journals, and proceed to reconsider the same. If, after such consideration, two-thirds of all the members of the Common Council elect shall agree to pass the same, it becomes an ordinance. In all such cases the votes must be taken by yeas and nays, and the names of the members voting for and against the same must be entered on the journal. If any ordinance is not returned by the Mayor within ten days (Sundays excepted) after it is presented to him, the same becomes effective, as if the Mayor had signed it.

Basis of section—Stats. 1850, p. 87.

Ordinance of a city—ratification by Legislature equivalent to its re-enactment by that body, 45 Cal. 446.

CHAPTER IV.

Judicial Powers.

§ 4424. Police Judge; vacancy, how filled.
§ 4425. Police Court Clerk.
§ 4426. Criminal jurisdiction.
§ 4427. General and exclusive jurisdiction.
§ 4428. When Justice of the Peace to act as Police Judge.
§ 4429. Always open, except on non-judicial days.
§ 4430. Proceedings in criminal offenses not triable in.
§ 4431. Criminal trials in Police Courts.
§ 4432. Civil practice in Police Courts.

4424. The City Police Judge must be a qualified elector of the city. Any vacancy in the office of Police Judge must be filled by an appointee of the Mayor, made with the advice and consent of the Common Council.

Police Judge's Court No. 2, of San Francisco—created by Stats. 1881, p. 75.

4425. The Police Judge may appoint a Clerk, with such compensation, by way of salary or fees, as the Common Council may by ordinance provide.

4426. The Police Court has exclusive jurisdiction of the following public offenses committed within the city boundaries:

1. Petit larceny;

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill;

3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment; and,

4. Of proceedings respecting vagrants, lewd, or disorderly persons.

Basis of section—Stats. 1866, p. 194.

Inapplicability to San Francisco—of provision as to misdemeanors in subd. 3 of section, 47 Cal. 127, 128.

4427. The Police Court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city, both civil and criminal;

2. Of any action for the collection of taxes and assessments levied for city purposes; or for the erection or improvement

of any school house or public buildings; for the laying out or opening or improving any public street or sidewalk, lane, alley, bridge, wharf, pier or dock; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made and ordered by the city within its limits, when the amount of the tax or assessments sought to be collected against the person assessed is less than three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action;

3. Of an action for the collection of money due to the city, or from the city to any person, when the amount sought to be collected, exclusive of interest and costs, is less than three hundred dollars;

4. For the breach of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city; and upon all bonds given upon any appeal taken from the judgment of the Court in any action above named where the amount claimed, exclusive of costs, is less than three hundred dollars;

5. For the recovery of personal property belonging to the city, when the value of the property (exclusive of the damages for the taking or detention) is less than three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city.

Basis of section—Stats. 1866, p. 194.

Jurisdiction of Police Court—must be affirmatively shown, as in case of any inferior Court, 55 Cal. 212.

SUBDIVISION 1. **Proceedings for violation of an ordinance**—jurisdiction in, 55 Cal. 212; judgment beyond jurisdiction in, ex parte Bernert, April 25, 1881, 7 P. C. L. J. 460.

4428. In all cases in which the Judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree; and in case of his sickness or inability, the Police Judge may call in a Justice of the Peace residing in the city to act in his place and stead.

4429. Police Courts are always open for the transaction of business, except on non-judicial days.

Basis of section—Stats. 1866, p. 195.

4430. Proceedings in the Police Court in criminal actions for offenses not triable in such Courts must be had in conform-

ity with the provisions of Part II, Title III, Chapter VII of THE PENAL CODE.

Preliminary examination—Penal Code, § 858 *et seq.*

4431. Proceedings in the Police Courts in criminal actions triable in such Courts are regulated in Part II, Title XI, Chapter I of THE PENAL CODE.

Proceedings in Police Courts—and Justices' Courts, Penal Code, § 1426 *et seq.*

4432. Proceedings in the Police Courts in civil actions are regulated by Part II, Title XII of THE CODE OF CIVIL PROCEDURE.

Proceedings in civil actions—in Police Courts, Code Civ. Proc., §§ 929-933.

CHAPTER V.

Certain Statutes Relating to Cities and Towns and existing Corporations continued.

§ 4442. Certain statutes continued in force.

4442. Nothing in this Code affects any of the provisions of "An Act to authorize and direct the municipal authorities of the several cities and incorporated towns of this State to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this State by the Act of Congress entitled an Act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March twenty-four, eighteen hundred and sixty-eight;" or of "An Act to authorize and direct the County Judges of the several counties of this State to execute certain trusts in relation to the town lands granted to the unincorporated towns in this State by the Act of Congress entitled an Act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March thirtieth, eighteen hundred and sixty-eight;" but such Acts are continued in force.

CHAPTER VI.

Funding and Refunding of City Indebtedness.

§ 4445. Power of Trustees or Municipal Council to fund indebtedness; issuance and form of bonds.
§ 4446. Sale and exchange of bonds.
§ 4447. Tax for payment of bonds; "Bond Fund."
§ 4448. Redemption of bonds.
§ 4449. Proceedings on failure to levy tax.

4445. The Board of Trustees or Municipal Council of any city having an outstanding indebtedness on the first day of January, eighteen hundred and eighty, evidenced by bonds or warrants thereof, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the public interest, to fund or refund the same, and issue bonds of the city therefor in sums not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent. per annum, payable semi-annually, which bonds shall be substantially in the following form: No. ———. The City of ———, in the County of ———, in the State of California, for value received, promises to pay ———, or order, at the office of the Treasurer of said city, in ———, on the first day of ———, 18—, or at any time before that day, at the pleasure of the city, the sum of ——— dollars, gold coin of the United States, with interest at the rate of ——— per cent. per annum, payable at the office of the said Treasurer, semi-annually, on the first days of ——— and ———, in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the Board of Trustees (or Municipal Council, as the case may be), under the provisions of chapter six, of title three, of part four, of the Political Code of California, and in conformity with a resolution of said Board of Trustees (or Municipal Council), dated ——— day of ———, 18—. In testimony whereof, the said city, by its Board of Trustees (or Municipal Council), has caused this bond to be signed by the President of the Board of Trustees (or Municipal Council), and attested by the Auditor, with the city seal attached, this ——— day of ———, 18—. (Seal.) ———, President of the Board of Trustees (or Municipal Council.) Attest: ———, Auditor. And the interest coupon shall be in the following form: $———. The Treasurer of the City of ———, County of ———, State of California, will pay the holder hereof, on the ——— day of ———, 18—, at his

office in ——— ———, dollars, gold coin, for interest on City Bond No. ———, issued under provisions of chapter six, of title three, of part four, of the Political Code of California. ———, City Auditor. If the President of the Board of Trustees (or Municipal Council), be ex officio Auditor, then and in that case said bonds shall be attested by the City Clerk instead of the Auditor. [In effect March 4, 1881.]

Gold coin provisions—in form of bond given in section, were inserted by amdt. 1881. Entire chapter inserted by amdts. 1880.

Compare as to county indebtedness—§§ 4045-4052.

4446. Whenever bonds issued under this chapter shall be duly executed, numbered consecutively, and sealed, they shall be delivered to the City Treasurer, and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them under the directions of the Board of Trustees, or Municipal Council, on the best available terms, for any legal indebtedness of the city outstanding on the first day of January, eighteen hundred and eighty; but in neither case for a less sum than the face value of the bonds, and all interest accrued on them at the date of such sale or exchange; and if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the city at and before the date above named. When they are exchanged for bonds or warrants, or other legal evidences of city indebtedness, the Treasurer shall at once proceed to cancel the old bonds and such other evidences of indebtedness by indorsing on the face thereof the amount for which they were received, the word "cancelled," and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him, by number, date of sale, amount, date of maturity, the name and post-office address of the purchaser, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the Treasurer of such purchase, giving at the same time the number of the bond transferred, and his post-office address, and every transfer shall be noted on the record. The Treasurer shall also report, under oath, to the Board, at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange. and when exchanged, a list or description of the city indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received by him on Bond Fund. and so entered by him on his books; but such bonds

shall not be sold or exchanged for any indebtedness of the city, except by the approval of the Board of Trustees or Municipal Council of said city. No sale shall be made of any such bonds, except to the highest bidder, after advertising bids for the purchase of the same for not less than three weeks, in at least one newspaper published in the county, the right being reserved in such advertisement to reject any or all such bids. [In effect April 27, 1880.]

4447. The Board of Trustees, or Municipal Council, shall cause to be assessed and levied each year, upon the taxable property of the city, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter, accruing before the next annual levy, and such proportion of the principal that at the end of five years the sum raised from such levies shall equal at least twenty per cent. of the amount of bonds issued; at the end of eight years at least forty per cent. of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the "Bond Fund," and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the Treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said Bond Fund. [In effect April 27, 1880.]

4448. Whenever the amount in the hands of the Treasurer belonging to the Bond Fund, after setting aside the sum required to pay the interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds, by advertising in any newspaper published in the county, not less than once a week, for three successive weeks, and in some newspaper of general circulation published in the City of San Francisco, not less than once a week, for three successive weeks, that he is prepared to pay the same, with all interest accrued thereon; and if not presented for payment or redemption within forty days after the first publication of such notice, the interest on such bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice herein required shall be directed to the Post Office address of the owner, as shown by the record kept in the Treasurer's office. [In effect April 27, 1880.]

4449. If the Board of Trustees or Municipal Council of any city which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the City Treasurer and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the County Treasurer of the county in which said city is situated, taking his receipt therefor, and the same shall be registered in the office of the County Treasurer; and the District Attorney shall, as soon as practicable, proceed by mandamus in the proper Court, in the name of the owner of the bond, to compel the said tax to be levied in said city, and at a sufficient rate to realize the amount of principal and interest past due and to become due prior to next levy, and the same shall be levied and collected as a part of the county tax, and paid into the County Treasury, and passed to the special credit of such city as bond tax, and shall be paid by warrants as the payments mature to the holder of such registered obligations, as shown by the register in the office of the County Treasurer, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said city. [In effect April 27, 1880.]

TITLE IV.

Liabilities of Counties and Cities for Injuries to Property by Mobs or Riots.

CHAPTER I.

§ 4452. Municipal corporations responsible for injuries by mobs or riots.
§ 4453. Actions for damages thus caused must be tried, where.
§ 4454. When action must be commenced.
§ 4455. Warrant to be issued for payment of damages; tax therefor.
§ 4456. Plaintiff not to recover if damage resulted from his own neglect.
§ 4457. Application of foregoing provisions to injuries to levees, etc.

4452. Every municipal corporation is responsible for injuries to real or personal property situate within its corporate limits, done or caused by mobs or riots.

Section based—on Stats. 1868, p. 418.

Section cited—in 55 Cal. 322.

Injuries to property by mobs or riots — municipal corporation responsible for, but not where caused by negligence of members of its Fire Department, 51 Cal. 52; nor where caused by overflow from canal excavated by Levee Commissioners, 52 Cal. 142.

Similar Act—held to have created a new right and provided a new remedy, 45 Cal. 90.

4453. Actions for damages under the preceding section must be tried in the county in which the property injured is situated.

Section based—on Stats. 1868, p. 419.

Section cited—in 55 Cal. 322.

Claim need not be presented—to Board of Supervisors for allowance, before action is brought to recover judgment on it, 45 Cal. 90.

Pleadings in action—complaint need not allege that claim presented to Board of Supervisors and disallowed, 45 Cal. 91.

Testimony in action—47 Cal. 532.

4454. All actions herein provided for must be commenced within one year after the act complained of is committed.

Basis of section—Stats. 1868, p. 419.

Like provision—in Code Civ. Proc. § 340, subd. 5.

4455. On the certificate of the presiding officer, or of the Clerk of the Court in which the judgment is rendered, the Board of Supervisors of the county or the legislative authority of the city must by ordinance direct and cause to be issued a warrant for the payment thereof on the General Fund, and the same must be paid in its regular order, as other warrants of the municipal corporation are paid; and must at the proper times levy and cause to be collected a tax on the taxable property of such municipal corporation for the payment of such warrant within a period of not more than three years.

Basis of section—Stats. 1863, p. 419.

Provisions of section mandatory—hence though claim never presented (as was held unnecessary, 45 Cal. 90), yet after judgment, Supervisors must allow it and Treasurer must pay it after it is audited, 55 Cal. 322.

4456. The plaintiff in any action authorized by this title must not recover if it appears upon the trial that the damage complained of was occasioned or in any manner aided, sanctioned, or permitted by his carelessness or negligence.

Plaintiff's negligence prevents recovery—and so, under previous statute, did plaintiff's lack of reasonable diligence to notify authorities of the threatened riot, (much more where they instigated the riot or participated therein), 47 Cal. 531.

4457. The provisions of this title and chapter are applicable to cases where the levees and other works of reclamation of any district are injured or destroyed by mobs or riots; and the actions brought for damages therefor must be prosecuted by the Attorney General of the State, in the name of the people of the State of California, and the amount recovered in such actions must be paid to the Treasurer of the county, who must place the same to the credit of the district. [Approved March 30; in effect July 6, 1874.]

Section added—by amdts. 1874.

PART V.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES.

[711]

PART V.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES.

TITLE I. DEFINITION AND SOURCES OF THE LAW.
II. EFFECT OF THE CODES.
III. PUBLICATION OF THE CODES, AND STATUTES CONTINUED IN FORCE.
IV. EXPRESS REPEAL OF STATUTES.

TITLE I.

Definition and Sources of the Law.

§ 4466. Definition of law.
§ 4467. How expressed.
§ 4468. Common law, when rule of decision.

4466. Law is a solemn expression of the will of the supreme power of the State.

4467. The will of the supreme power is expressed:
1. By the Constitution;
2. By statutes.

4468. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the Courts of this State.

Basis of section—Stats. 1850, p. 219.

TITLE II.

Effect of the Codes.

§ 4478. Construction of the Codes with relation to the laws passed at the present session.
§ 4479. Laws passed at present session prevail.
§ 4480. Construction of Codes with relation to each other.
§ 4481. Conflicts between Titles, which to prevail.
§ 4482. Conflicts between Chapters, which to prevail.
§ 4483. Conflicts between Articles, which to prevail.
§ 4484. Conflicting sections of the same Title, which to prevail.

4478. With relation to the laws passed at the present session of the Legislature, THE POLITICAL CODE, CIVIL CODE, CODE OF CIVIL PROCEDURE, and PENAL CODE, must be construed as though each had been passed on the first day of the present session.

Section cited and applied—49 Cal. 273-4.

Construed as though passed on first day of session—otherwise as to special title, see § 3891.

Material bearing on section—and next, of sections 18 and 19 of this Code, see 47 Cal. 128.

4479. If the provisions of any law passed at the present session of the Legislature contravene or are inconsistent with the provisions of either of the four Codes, the provisions of such law must prevail.

Section affected—as well as preceding one, by §§ 18, and 19 *ante*, 47 Cal. 128.

Laws of session of 1871-2 must prevail—over Codes adopted at same session, 47 Cal. 488.

4480. With relation to each other, the provisions of the four Codes must be construed (except as in the next two sections provided) as though all such Codes had been passed at the same moment of time, and were parts of the same statute.

Conflict of Codes—construction to give effect to both, 51 Cal. 297; see further, Effect to all portions, under Construction of Statutes, § 4*n*.

4481. If the provisions of any Title conflict with or contravene the provisions of another Title, the provisions of each Title must prevail as to all matters and questions arising out of the subject matter of such Title.

Title of Act—as aid to construction, see under Construction of Statutes, § 4*n*.

4482. If the provisions of any chapter conflict with or contravene the provisions of another chapter of the same Title, the provisions of each chapter must prevail as to all matters and questions arising out of the subject matter of such chapter.

4483. If the provisions of any Article conflict with or contravene the provisions of another Article of the same chapter, the provisions of each Article must prevail as to all matters and questions arising out of the subject matter of such Article.

4484. If conflicting provisions are found in different sections of the same chapter or Article, the provisions of the sections last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter or Article.

TITLE III.

Publication of the Codes.

§ 4494. Codes not published as part of the statutes.

4494. The Codes passed at this session of the Legislature must not be published as part of the statutes passed at this session, but provision must be made by law for their publication.

Publication of Codes—see Stats. 1872, p. 481.

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TITLE IV.

Express Repeal of Statutes.

§ 4504. Repeal of repealed statutes not to imply that they were in force.
§ 4505. Express repeal of statutes to be provided for.

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Repealing Statutes—and Repeals by Implication, § 18, notes.

4505. The express repeal of statutes will be provided for by a separate statute, and such statute, after its passage, must be construed in the same manner, and must have like effect as if it were part of this Code.

Approved March 12th, 1872.

NEWTON BOOTH,
Governor.

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APPENDIX.

An Act to provide for indexing the names of persons who have declared their intention to become, or who have become citizens of the United States, in the several Courts of record in this State.

SECTION 1. It shall be the duty of the Clerks of the several Courts of record in this State to provide two books, in the one of which shall be entered in alphabetical order, the names of all persons who, from the organization of said Courts, have declared or who may hereafter declare their intention to become citizens of the United States, together with the date of such declaration; and in the other of which shall be entered in alphabetical order, the names of all persons who have been or who may be hereafter admitted citizens of the United States by any Courts of which they are Clerks, and they shall also enter in separate columns opposite each name, the country of which he was before a citizen or subject, the date of his admission, and the page of the book of the record of the Court containing the order admitting him as such citizen.

SEC. 2. The said Clerks shall be entitled to receive for their own use and benefit, a fee of twenty cents for each name indexed as provided in section one of this Act, and said fees, together with the costs of said books, shall become a county charge, and shall be allowed by the Board of Supervisors of the several counties, and paid out of the same fund that other services rendered by said Clerks to their respective counties are paid; *provided*, that no compensation shall be allowed any Clerk under the provisions of this Act for indexing any names contained in any such records which have been heretofore indexed, but such records and indices shall stand in lieu of those provided for in this Act; and *provided* further, that no Clerk shall be entitled to charge or receive any fee for indexing the name of any person who may declare his intention to become or who may become a citizen of the United States after the passage of this Act. [In effect February 8, 1872. Stats. 1871-2, p. 80.]

of the deceased, and to give a profess
cause of the death.

SEC. 2. Any physician, surgeon, or
attending as a witness on an inquest,
person charged with murder or man
de lunatico inquirendo, as above provi
reasonable compensation for such atte
by the Board of Supervisors, upon th
the Court or officer requiring such se
and supposed value of the same; *prov*
cate shall not be conclusive as to the
tion. [Approved February 8, 1872. St

An Act prescribing certain duties to be
Controller, State Treasurer, and State

SECTION 1. The State Controller sha
Treasurer, on the tenth, twentieth, a
month, and when either of these days
which the State Controller is not requi
open for the transaction of business, th
mediately preceding the days herein me
of all warrants drawn by him upon the
date of his last report. Such report sha
date, and amount of each warrant, to w
fund out of which it is payable. From th
by the Controller, the State Treasurer s
of Warrants, and shall pay all warrants
they are drawn by the Controller.

SEC. 2. Upon the last day of each
such last day falls upon a day on which t
not required by law to keep his office op
of business, then upon the day immedi
last day, the State Treasurer shall furnis

s, and amounts of the several warrants drawn by the Con-
ler and then unpaid by the Treasurer, and to adjust the
nces in the several funds of the State Treasurer upon the
ks of the Controller and Treasurer, in accordance with
sums found to the credit of each on the books of the Con-
ller, and the warrants found to be outstanding and not
d by the Treasurer.

SEC. 4. When the balances in the several funds of the
ite Treasury shall be adjusted as provided for in the next
eceding section, the State Board of Examiners shall count
e money in the State Treasury and compare the amount
th the amount found to be in all the funds of the State
easury by the books of the State Controller, and upon the
st business day of each month thereafter the State Con-
oller shall furnish the State Board of Examiners with a
tatement of the amount of money in each fund of the State
reasury, and the total amount as the same appears upon the
ooks of his office, together with a list of warrants issued by
im but not paid by the State Treasurer, and for the payment
of which there is money in the State Treasury. Upon the re-
ceipt of such statement from the Controller, the State Board
of Examiners shall proceed to count the money in the State
Treasury, and compare the amount with the amount named
in the statement of the Cotroller.

SEC. 5. Whenever any warrant issued by the State Controller shall remain in his office uncalled for by the owner thereof for the period of one year after such warrant has become payable, it shall be the duty of the Controller and Treasurer, in the presence of the State Board of Examiners, to cancel the same; and whenever any warrant, delivered to the owner thereof by the Controller, but not presented to the State Treasurer for payment for a period of one year after such warrant has become payable, said warrant shall be deemed to be canceled, and the Treasurer shall, in the presence of the Controller and State Board of Examiners, write the word "canceled" opposite the entry of such warrant in his registry of warrants provided for in the first section of this Act. The word "canceled" shall also be written by the State Controller opposite the entry in the warrant register in his office, of all warrants required to be canceled by this Act. The amounts of all warrants canceled under the provisions of this Act shall revert to the fund in the State Treasury against which said warrants were drawn, and shall be entered upon the books of the Controller to the credit of such fund, in the same manner as other moneys paid into the State Treasury.

SEC. 6. The Controller and Treasurer shall each keep a register of warrants canceled under this Act, in which shall be entered the number, date, and amount of the warrants, the

An Act concerning the attendance of physicians and surgeons in certain cases, and to provide payment for making chemical and post-mortem examinations.

SECTION 1. The Coroner or other officer holding an inquest upon the body of a deceased person may summon a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach, or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death.

SEC. 2. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases *de lunatico inquirendo*, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the Board of Supervisors, upon the written certificate of the Court or officer requiring such services, as to the extent and supposed value of the same; *provided*, that such certificate shall not be conclusive as to the amount of compensation. [Approved February 8, 1872. Stats. 1871-2, p. 71.]

An Act prescribing certain duties to be performed by the State Controller, State Treasurer, and State Board of Examiners.

SECTION 1. The State Controller shall furnish to the State Treasurer, on the tenth, twentieth, and last days of each month, and when either of these days falls upon a day on which the State Controller is not required to keep his office open for the transaction of business, then upon the day immediately preceding the days herein mentioned, with a report of all warrants drawn by him upon the Treasurer since the date of his last report. Such report shall show the number, date, and amount of each warrant, to whom issued, and the fund out of which it is payable. From the report so furnished by the Controller, the State Treasurer shall make a Register of Warrants, and shall pay all warrants in the order in which they are drawn by the Controller.

SEC. 2. Upon the last day of each month, except when such last day falls upon a day on which the State Treasurer is not required by law to keep his office open for the transaction of business, then upon the day immediately preceding such last day, the State Treasurer shall furnish the State Controller with a list of all warrants paid by him since the date on which his last list was furnished. Such list shall contain the number, date, and amount of each warrant, and the fund out of which the same was paid.

SEC. 3. Immediately after the passage of this Act, it shall be the duty of the State Controller and State Treasurer, under the supervision of the Governor, to ascertain the numbers,

dates, and amounts of the several warrants drawn by the Controller and then unpaid by the Treasurer, and to adjust the balances in the several funds of the State Treasurer upon the books of the Controller and Treasurer, in accordance with the sums found to the credit of each on the books of the Controller, and the warrants found to be outstanding and not paid by the Treasurer.

SEC. 4. When the balances in the several funds of the State Treasury shall be adjusted as provided for in the next preceding section, the State Board of Examiners shall count the money in the State Treasury and compare the amount with the amount found to be in all the funds of the State Treasury by the books of the State Controller, and upon the first business day of each month thereafter the State Controller shall furnish the State Board of Examiners with a statement of the amount of money in each fund of the State Treasury, and the total amount as the same appears upon the books of his office, together with a list of warrants issued by him but not paid by the State Treasurer, and for the payment of which there is money in the State Treasury. Upon the receipt of such statement from the Controller, the State Board of Examiners shall proceed to count the money in the State Treasury, and compare the amount with the amount named in the statement of the Cotroller.

SEC. 5. Whenever any warrant issued by the State Controller shall remain in his office uncalled for by the owner thereof for the period of one year after such warrant has become payable, it shall be the duty of the Controller and Treasurer, in the presence of the State Board of Examiners, to cancel the same; and whenever any warrant, delivered to the owner thereof by the Controller, but not presented to the State Treasurer for payment for a period of one year after such warrant has become payable, said warrant shall be deemed to be canceled, and the Treasurer shall, in the presence of the Controller and State Board of Examiners, write the word "canceled" opposite the entry of such warrant in his registry of warrants provided for in the first section of this Act. The word "canceled" shall also be written by the State Controller opposite the entry in the warrant register in his office, of all warrants required to be canceled by this Act. The amounts of all warrants canceled under the provisions of this Act shall revert to the fund in the State Treasury against which said warrants were drawn, and shall be entered upon the books of the Controller to the credit of such fund, in the same manner as other moneys paid into the State Treasury.

SEC. 6. The Controller and Treasurer shall each keep a register of warrants canceled under this Act, in which shall be entered the number, date, and amount of the warrants, the

name of the person in whose favor it was drawn, the fund out of which it was payable, and the date of cancellation. Whenever the owner of any warrant canceled under the provisions of this Act demands such warrant from the Controller, it shall be the duty of the Controller to issue a new warrant for the same amount, in the name of the same person, and payable out of the same fund as the warrant canceled; and in case where a warrant issued by the Controller, but not paid by the Treasurer, has been canceled and the owner or holder thereof presents the same for payment, it shall be the duty of the State Controller to draw a new warrant therefor, in the name of the same person, for the same amount, and payable out of the same fund as the original warrant, and such original warrant shall thereupon be canceled by him and retained in his office as his voucher for issuing such new warrant. In all cases where a warrant shall be issued in lieu of one canceled, the word "duplicate" shall be plainly written or printed across the face thereof, in red ink, by the Controller, and the issue thereof noted on the registry of canceled warrants kept in his office, and when any such duplicate warrant is paid by the State Treasurer he shall note the payment thereof on the registry of canceled warrants kept in his office.

SEC. 7. Whenever the interest coupons attached to any registered bond of this State issued under either of the following named Acts, to wit: An Act to provide for paying certain equitable claims against the State of Caltfornia, and to contract a funded debt for that purpose, approved April twenty-eight, eighteen hundred and fifty-seven; an Act to amend an Act entitled an Act to provide for paying certain equitable claims against the State of California, and to contract a funded debt for that purpose, approved April twenty-eight, eighteen hundred and fifty-seven, approved April twenty-seven, eighteen hundred and sixty; an Act for the relief of the enlisted men of the California Volunteers in the service of the United States, approved April twenty-seven, eighteen hundred and sixty-three; an Act granting bounties to the volunteers of this State, enlisted in the service of the United States, for issuing bonds to provide funds for the payment of the same, and to levy a tax to pay such bonds, approved April fourth, eighteen hundred and sixty-four, and an Act authorizing the issuance of State bonds to the amount of two hundred and fifty thousand dollars, to be known as State Capitol Bonds, approved April fourth, eighteen hundred and seventy, shall not be presented to the State Treasurer for payment for a period of one year after such coupon has become due and payable. It shall be the duty of the State Treasurer to furnish the State Controller and State Board of Examiners each with a list of such coupons not presented for payment with the amount thereof, whereupon the State Controller shall order the Treasurer to

place the money held by him for the payment of such coupons into the General Fund of the State Treasury, and the amount so ordered into the General Fund shall be placed to the credit of said fund on the books of the Controller and Treasurer in the same manner as other moneys paid into the State Treasury.

SEC. 8. Whenever any of the interest coupons mentioned in the seventh section of this Act are presented for payment, after the money to pay the same has been transferred to the General Fund, such coupons shall be presented to the State Board of Examiners, which Board shall audit and allow them out of the General Fund of the State Treasuary, and shall transmit a voucher to the State Controller, upon which to draw his warrant upon the State Treasurer. Upon the presentation of such warrant and the surrender to him of the coupons for the payment of which the said warrant is drawn, the State Treasurer shall pay the same out of the General Fund.

SEC. 9. Immediately after the passage of this Act the State Board of Examiners shall examine the books in the State Treasurer's office, in which are pasted the coupons of the registered bonds of the State paid by him, and shall require the State Treasurer to make out a list of all coupons not found therein, as provided for in section seven of this Act, and the money held by him for the payment thereof shall be placed in the General Fund as provided in this Act. [In effect February 20, 1872. Stats. 1871-2, p. 117.]

An Act to furnish arms for the use of military academies in the State.

SECTION 1. That when a military academy has been established within the State, having not less than eighty boys, uniformed, drilled, and instructed in strict accordance with the tactics of the regular United States army service, and all its course of education and economy conducted upon strict military principles, the military instructor of such academy, when regularly elected by the Board of Trustees or other lawful authority of the academy, be commissioned in the National Guard of California, with the rank of Major.

SEC. 2. That upon giving bond, with good security, to be approved by the County Judge of the county where the academy is situated, conditioned for the safe keeping against fire, loss, and against all damages, in twice the value, that arms and accoutrements, the property of the State, be issued for the use of such military academy.

SEC. 3. The Adjutant General of the State is hereby authorized to issue such arms and accoutrements as may be needed by the said military academies, without a monthly allowance, in the same manner as arms and accoutrements are issued to

regularly organized companies of the National Guard of California, upon requisition made for this purpose, approved by the Commander-in-Chief. [In effect February 20, 1872. Stats. 1871–2, p. 118.]

An Act to define the northern boundary line of Napa County, adjoining Lake and Yolo Counties.

SECTION 1. The northern boundary line of Napa and the southeasterly boundary line of Lake Counties shall commence at the highest point of the Mount St. Helena; thence running in an easterly direction along the present boundary line between said counties to the Buttes Canyon road; thence northeasterly in a direct line to the junction of Jericho and Putah Creeks; thence up Jericho Creek to the junction of Hunting Creek, in Jericho Valley; thence up Hunting Creek to a large pile of rocks on the southeasterly side of the county road, at the lower and most easterly end of Hunting Valley; thence in a straight line in the direction of the intersection of Bear and Cache Ceeeks to the county line of Yolo County; thence along the line of Yolo County in a southeasterly direction to the present county line dividing Yolo and Napa Counties. [In effect March 8, 1872. Stats. 1871–2, p. 305.]

An Act to create the County of Ventura, to establish the boundaries thereof, and to provide for its organization.

SECTION 1. There shall be formed out of the eastern part of Santa Barbara County a new county, to be called Ventura.

SEC. 2. The boundaries of Ventura County shall be as follows: Commencing on the coast of the Pacific Ocean, at the mouth of the Rincon Creek; thence following up the center of said creek to its source; thence due north to the northern boundary line of Santa Barbara County; thence in an easterly direction along the said boundary line of Santa Barbara County to the northeast corner of the same; thence southerly along the line between the said Santa Barbara County and Los Angeles County to the Pacific Ocean and three miles therein; thence in a northwesterly direction to a point due south of and three miles distant from the center of the mouth of Rincon Creek; thence north to the point of beginning, and including the Islands of Anacapa and San Nicholas.

SEC. 3. The seat of justice shall be at the town of San Buenaventura until otherwise provided by law. [Approved March 22, 1872; in effect January 1, 1873. Stats. 1871–2, p. 484.]

An Act for the relief of purchasers of State lands.

SECTION 1. When application has been made to purchase lands from this State and payment made to the Treasurer of any county of this State, in whole or in part, and a certificate of purchase or patent has been issued to the applicant, the title of the State to said land is hereby vested in said applicant, or his assigns, upon his making full payment therefor; *provided*, that no other application has been made for the purchase of the same lands prior to the issuance of said certificate of purchase; *provided further*, that this Act shall not apply to school lands except to the amount of three hundred and twenty acres to any one purchaser. [Nor shall it be construed to remedy any defect in any application, or the issuing of any certificate other than that of payment in the wrong county, nor otherwise to conflict with or limit the provisions of the Act hereby amended. [Amendment in effect April 1, 1878.]

SEC. 2. When part payment only has been made for lands sold by this State and certificates of purchase issued for the same, and said lands have been subsequently sold under execution and a Sheriff's deed issued therefor, the Register of the State Land Office is hereby directed to issue to the grantee named in said deed or to his assigns a patent for said lands, upon his producing and surrendering said Sheriff's deed and assignment, if any there be, and making full payment to the State for said lands.

SEC. 3. Whenever the State has issued a certificate of purchase for any land sold as swamp and overflowed, and the United States has sold and issued a patent for the same land, and the title of the United States is held and owned by the purchaser from the State or his assigns, or where the land so purchased from the State shall prove not to have been its property, the amount paid to the State for such land shall be refunded to such purchaser or his assigns, and the Board of Supervisors of the county in which the land is situated shall draw a warrant on the Treasurer of the county for such amount, and the said Treasurer shall pay the same out of moneys in the Swamp Land Fund of the county credited to such purchaser.

SEC. 4. The provisions of this Act shall not apply to any lands within the County of San Diego, or within five miles of the City and County of San Francisco, or within five miles of the City of Oakland, or within one and a half miles of the State Prison at San Quentin. [In effect March 27, 1872. Stats. 1871–2, p. 587.]

An Act to legalize applications heretofore made for the purchase of lands belonging to the State, and to confirm the title of the purchasers under such applications.

SECTION 1. All applications heretofore made for the purchase of lands belonging to this State under the provisions of any Act authorizing the sale of State lands, shall be good and valid, although the land described in such application and affidavit may be styled salt marsh and tide land, when in fact it is swamp and overflowed land; or may be styled swamp and overflowed land, when in fact it is salt marsh and tide land; or may be styled swamp and overflowed and salt marsh and tide land, when in fact it may be either. And the application first made shall have the preference by whatever style it may describe the land; *provided*, the same be in all other respects substantially conformable to law.

SEC. 2. In all cases where patents have been or may hereafter be issued upon any such application or affidavits as described in section one of this Act for any such land, the same shall be deemed and held to convey the legal title to the land in such patent or patents described to the purchaser therein mentioned, by whatever style such land may be designated in such patent; and the State of California does hereby grant to the purchasers named in such patents, or their assigns or grantees, in case the title has been transferred, all its right, title, and interest in and to the lands in such patents described.

SEC. 3. The provisions of this Act shall not be construed to recognize, confirm, or validate any title to any lands lying within five miles of the City and County of San Francisco or of the City of Oakland, or within one and a half miles of the State Prison at San Quentin. [In effect March 27, 1872. Stats. 1871–2, p. 325.]

An Act to establish pilots and pilot regulations for the Port of San Diego.

SECTION 1. It shall be the duty of the Governor to appoint one citizen, resident of San Diego, as Pilot Commissioner. The President of the Board of Trustees and the President of the Chamber of Commerce of said city shall be ex officio Pilot Commissioners. The three persons named shall constitute a Board of Pilot Commissioners, with the powers and duties as hereinafter provided.

SEC. 2. Each Commissioner shall, before entering upon his official duties, take the following oath or affirmation, which shall be indorsed on his commission, and shall be signed by him and certified by the County Judge of the County of San Diego: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will

faithfully discharge the duties of the office of Pilot Commissioner, without fear, favor, or affection, according to the best of my ability."

SEC. 3. The Board of Pilot Commissioners shall hold their offices during the pleasure of the power appointing them, not exceeding four years.

SEC. 4. The Board of Pilot Commissioners shall meet at least once in each month. They shall elect one of their number President, who shall be authorized to administer oaths, and under his hand and private seal to issue subpœnas for the attendance of witnesses in all cases arising before the Board under this Act. A witness disobeying such subpœna shall forfeit and pay a sum not exceeding one hundred dollars, which may be sued for and recovered in a civil action, in the name of the President of the Board. It shall make by-laws and rules for its own government of the pilots, not inconsistent with the laws of this State or of the United States. A majority of such Board shall constitute a quorum for the transaction of business, and may meet and adjourn from time to time, according to adjournment or appointment.

SEC. 5. The Commissioners may organize as a Board at any time after their appointment and qualification. After their organization they shall proceed to examine and license, in the manner prescribed herein, not more than four pilots, for the Port of San Diego; *provided*, that nothing in this section shall be so construed as to remove any pilot until his commission shall expire.

SEC. 6. No person shall be appointed a pilot unless he is an American citizen, over the age of twenty-one years, with a practical knowledge of the management of sailing vessels and steamboats, and of the tides, soundings, bearings, and distances of the several shoals, bars, rocks, points of land, lighthouse, and fog signals of the Port and Harbor of San Diego.

SEC. 7. Every pilot receiving a license shall, before entering on the discharge of his duties, take the oath prescribed by the Constitution of this State, which shall be indorsed upon his license, signed by him, and certified by the President of the Board; and shall give a bond in the sum of twenty-five hundred dollars, with two sureties, to be approved by the Board and recorded in the County Recorder's office of San Diego County, made payable to the State of California, and conditioned that he will faithfully perform all the duties required of him as a pilot under this Act, and will observe the rules and regulations and decisions of the Board. The pilots shall renew their bonds whenever the Board may deem it necessary and shall so order. In all cases where a pilot shall have been deprived of his license before the expiration thereof for any of the causes hereinafter specified, it shall be the duty of the President of the Board, provided a majority of the Board shall

instruct, to place the bonds of such pilot in the hands of the Attorney General of the State of California for collection. If any amount be collected thereon in such suit, it shall be paid to the Board and shall constitute a fund out of which it shall be the duty of the Board to provide rewards to encourage the relief of vessels and passengers in distress, and generally to encourage the pilots in the energetic performance of their duties.

SEC. 8. It shall be the duty of every pilot in charge of a vessel arriving in the Harbor of San Diego to have the vessel safely moored in such a position as the master may direct.

SEC. 9. Every pilot carried to sea against his will, when a pilot boat is in attendance to receive him, shall be entitled to receive the sum of eight dollars per day while absent, which sum may be recovered from the master or owner of the vessel so taking him away; *provided*, the amount herein allowed to be recovered shall in no case exceed one thousand dollars.

SEC. 10. Any pilot may be deprived of his license before the expiration thereof for the following causes:

First—For refusing to exhibit his license when requested to do so by the master of any vessel he may have boarded.

Second—For habitual or occasional intoxication, whether the same shall occur while in charge of a pilot boat or at any other time.

Third—For negligently, ignorantly, or wilfully running any vessel on shore or otherwise rendering her liable to injury; *provided*, that any pilot deprived of his license under this subdivision shall thereafter be ineligible to a license as pilot under this Act.

SEC. 11. Any person not being the master or owner, not holding a license as pilot, who shall pilot any vessel into or out of the Harbor of San Diego, shall be deemed guilty of a misdemeanor, and on conviction in any Court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding ninety days.

SEC. 12. All vessels, their tackle, apparel, and furniture, and the master and owners thereof, shall be jointly and severally liable for pilotage fees, to be recovered in any Court of competent jurisdiction.

SEC. 13. When two or more pilots shall offer their services to a vessel outside of a line from Punta Lomas and the southeast end of Zuinga Shoal, the pilot first offering his services shall have the preference; and if the master of any vessel shall refuse to observe such rule of preference, and to take the pilot entitled to be preferred on board, the vessel, her appurtenances, the master and owner thereof, shall be jointly and severally liable to the pilot entitled to such preference for one half of the amount of pilotage he would have been entitled to claim had his services been accepted.

SEC. 14. The following shall be the rates of pilotage into or out of the Harbor of San Diego: All vessels under five hundred tons, five dollars per foot draught; all vessels over five hundred tons, five dollars per foot draught, and four cents per ton for each and every ton of registered measurement; all vessels engaged in the whaling or fishing trades, one dollar per foot draught. When a vessel is spoken and the services of a pilot are declined, one half of the rates shall be paid. All vessels coasting between San Diego and any port in Oregon, or in Washington and Alaska Territories, and all vessels coasting between ports of this State, and all steamers from Panama connecting with the Panama Railroad, touching at said port of San Diego, bound to other coast ports, shall be exempt from all charges for pilotage unless a pilot be actually employed.

SEC. 15. All pilots absenting themselves from San Diego for more than thirty days, shall forfeit his commission, except in case of sickness. [In effect March 26, 1872. Stats. 1871-2, p. 650.]

An Act to provide for Public Administrators in certain cases.

SECTION 1. If the Public Administrator of any county of this State fails to qualify, or in person fails to perform the duties of his office, the Coroner of such county shall be ex officio Public Administrator; and in case both Public Administrator and Coroner fail to qualify or to perform the duties appertaining thereto, the Supervisors shall appoint a suitable person to be public administrator; and all laws applicable to the qualification, powers, duties, and compensation of Public Administrater shall apply to the Coroner or appointee of the Supervisors as aforesaid. [In effect March 30, 1872. Stats. 1871-2, p. 550.]

An Act to better define the boundary line of Mariposa and Fresno Counties.

SECTION 1. The line at present known as the boundary line between Mariposa and Fresno Counties, from the westerly point of junction of said counties running easterly to the southwest corner of section eleven, and the northwest corner of section fourteen, in township sixth south, range twenty east, of Mount Diablo meridian; thence east to the northwest corner of section fourteen, in township six south, range twenty-one east; thence north to the northwest corner of section thirty-five, in township five south, range twenty-one east; thence east to the southwest corner of section thirty, in township five south, range twenty-two east; thence north to the southwest corner of the Mariposa Big Tree Grant; thence east along the line of said grant to the southeast corner of said grant; thence north along the line of said grant to the northeast corner of the same; thence

north to the original boundary line between the Counties of Mariposa and Fresno; thence along said line to the present boundary line, is hereby declared and constituted the boundary line between said counties. [Approved April 1, 1872. Stats. 1871–2, p. 891.]

An Act to more clearly define the boundary line between the Counties of Lake and Yolo, in the State of California.

SECTION 1. The line establisned by H. H. Sanford, as Deputy Surveyor General, under special instruction of J. W. Bost, Surveyor General of California, at the request of the Boards of Supervisors of the Counties of Lake and Yolo, and designated on a certain map on file in the office of the Surveyor General of the State of California, and indorsed "Map of the boundary line between Lake and Yolo Counties, surveyed April, eighteen hundred and seventy-one, by H. H. Sanford, Deputy Surveyor General of California," is hereby declared the boundary line between the said Counties of Lake and Yolo, provided the same is in accordance with the provisions of an Act to more clearly define and establish the boundary line of Yolo County, approved March third, eighteen hundred and sixty-six. [In effect April 1, 1872. Stats. 1871–2, p. 903.]

An Act to create the County of San Benito, to establish the boundaries thereof, and to provide for its organization.

SECTION 1. There shall be formed, out of the eastern part of Monterey County, a new county, to be called San Benito.

SEC. 2. The boundaries of San Benito County shall be as follows: Commencing at a point in the center of Pajaro River, said point being the northwest corner of the Rancho las Arromitas y Agua Caliente, and being on the northern boundary line of Monterey County, and running thence in a southerly direction along the southwest boundary of said rancho to the southwest corner thereof; thence southerly in a direct line to the northwest corner of the Rancho las Vergelos; thence southerly in a direct line to the summit of the Gavilan range of mountains; and thence southeasterly along the summit of said Gavilan mountains to the Chalon Peak; thence southeasterly in a direct line to the division line of the parts of the San Lorenzo Sobrantes owned respectively by Breen and Dunn; thence along said dividing line of said rancho to the southern boundary thereof; thence due south to the San Lorenzo Creek; thence southeasterly up said San Lorenzo or Lewis Creek, and up the north fork thereof, to the summit of the divide between the waters of said Lewis Creek and San Benito Creek; thence, following said divide southerly, to the eastern boundary of Monterey County, and the summit of the

Coast Range of mountains; thence northerly, following the summit of said mountains, to the southern boundary line of Santa Clara County; thence westerly, following the southern boundary line of Santa Clara County, to the place of beginning.

SEC. 3. The seat of justice shall be at the Town of Hollister, until otherwise provided by this Act. [In effect February 12, 1874. Stats. 1873–4, p. 95.]

An Act to create the County of Modoc, to establish the boundaries thereof, and to provide for its organization.

SECTION 1. There shall be formed out of the eastern part of Siskiyou County, a new county, to be called Modoc.

SEC. 2. The boundaries of Modoc County shall be as follows: Commencing at the northeast corner of the State of California; thence west, along the northern boundary line of said State, to the range line between ranges Nos. four (4) and five (5) east of Mount Diablo base and meridian; thence due south, on said range line, to the southern boundary line of Siskiyou County; thence east along said southern boundary line, to the State line; and thence north to the place of beginning.

SEC. 3. The seat of justice shall be at the Town of Dorrisbridge, until otherwise provided by law. [In effect February 17, 1874. Stats. 1873–4, p. 124.]

An Act to make women eligible to educational offices.

SECTION 1. Women, over the age of twenty-one years, who are citizens of the United States and of this State, shall be eligible to all educational offices within the State, except those from which they are excluded by the Constitution.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed. [In effect March 12, 1874. Stats. 1873–4, p. 356.]

An Act concerning the selection and sale of University lands.

SECTION 1. In all cases when a contest shall arise between two or more persons concerning the right of such persons to purchase any portion of the one hundred and fifty thousand acres of land granted to the State for the use of an Agricultural College, if either party shall demand a trial in the Courts of the State, the Land Agent of the University, as the agent of the State, shall make an order referring said contest to the District Court of the county in which the land involved is situated, and shall enter said order in the proper record book of his office; *provided*, that the party making such de-

mand shall prosecute his contest to judgment within six months from the date of such demand, unless for cause satisfactory to the Court. Either party may bring an action in the District Court of the county in which the land in question is situated, to determine such conflict, and the proffer of a certified copy of the entry, made by the said agent, shall give the said District Court full and complete jurisdiction to hear and determine said conflict; and upon the filing with the said agent of a copy of the final judgment of said Court, he shall issue the certificate of purchase or other evidence of title, in accordance with said final judgment.

SEC. 2. Whenever any resident of this State desires to purchase any part of the one hundred and fifty thousand acres of land granted to the State for the use of an Agricultural College, he or she shall make an affidavit before any officer authorized to administer oaths, that he or she is a citizen of the United States (or, if a foreigner, then that he has filed his intention of becoming a citizen), a resident of the State, of lawful age; that he or she desires to purchase said land, giving a description thereof by legal subdivisions, and that there are no improvements of any kind on said land other than those of the applicant; or if there be improvements other than his own, then he or she shall state that such improvements are the property of (giving his or her name), and have been upon the land for three months or over, and that the township has been sectionized and the plats of survey filed in the Land Office of the district in which the land is located, for three months or over, which application shall be forwarded to the said Land Agent of the University. [In effect March 13, 1874. Stats. 1873–4, p. 356.]

An Act to protect bona fide settlers upon public lands.

SECTION 1. Bona fide settlers upon any sixteenth or thirty-sixth section, which at the time of such settlement was embraced within any survey made under claim or color of any Spanish or Mexican grant, but which has since been or hereafter may be restored to the public domain by the proper officers of the Government of the United States, shall be preferred purchasers for the lands so settled upon by them to the lines of their actual possession, and in accordance with the general system of Government surveys, and not exceeding three hundred and twenty acres; and all applications made by such settlers to purchase said lands from the State within one year from the date of such restoration, are hereby declared to entitle said settlers to become preferred purchasers for the lands so held as aforesaid, in the same manner and to the same extent as if made within the sixty days, as now provided for by law; and said sixty days preferment is hereby extended

to, and declared to be, one year from the date of said restoration; and all such applications made within one year from the date of said restoration shall be held and deemed as valid and binding as if made within sixty days from the date of said settlement. [In effect March 23, 1874. Stats. 1873–4, p. 543.]

An Act to annex the territory comprised in the present County of Klamath, to the Counties of Humboldt and Siskiyou.

SECTION 5. All that part of the territory now composing the County of Klamath, situate and lying north and easterly of the following line and boundary, to wit: Commencing at the point where the present boundary of Klamath and Del Norte crosses the Klamath River; thence running easterly in a direct line to where the Salmon River enters the Klamath River; thence in a southerly direction, following the ridge of the mountain that divides the waters of the Salmon and its tributaries from the waters of Klamath and Trinity Rivers, and their tributaries, to the northern boundary line of Trinity County; shall be and compose a part of the County of Siskiyou, and shall be within the jurisdiction thereof, and of the Courts and officers of said county; and all that part of the territory now composing the County of Klamath, situate and lying south and westerly of the above described boundary and line, shall be a part of Humboldt County, and within the jurisdiction thereof, and of the Courts and officers of the county. [In effect March 28, 1874. Stats. 1873–4, p. 756.]

An Act regulating the sale of mineral lands belonging to the State.

SECTION 1. Any person desiring to purchase from this State any portion of any sixteenth or thirty-sixth section, that shall have been designated by United States survey as of a mineral character, or which is so in fact, shall make an affidavit before some officer authorized to administer oaths, that he or she is a citizen of the United States, or, if a foreigner, that he has filed his intention to become a citizen of the United States; that he or she is of lawful age, and desires to purchase said land, giving a description thereof by legal subdivisions; that he or she has not entered any portion of such mineral lands which, together with that applied for in such affidavit, will exceed forty acres; that there is no occupation of said land adverse to that which he or she holds, or, if there be any adverse occupation thereof, then he or she must state the name of such adverse occupant, together with the fact that the plat of the township has been on file six months or over, and that such adverse occupant has been in such occupation six months or over.

SEC. 2. Any person that shall be in the actual possession of any of said lands described in section one, at the time of the survey thereof by the United States, or at the time of the passage of this Act, shall be considered a preferred purchaser thereof; *provided*, he or she make his or her application for the purchase of the same within six months after the filing of the plat of such survey in the United States Land Office, or within ten months after the passage of this Act.

SEC. 3. When a contest shall arise as to the mineral character of the lands applied for, or from any other cause, the Surveyor General, or the Register before whom the contest is made, must, within thirty days after the adverse application is filed, unless sooner referred, at the request of either claimant, make an order referring such contest to the Superior Court of the county within which the land is situated, and must enter such order in the proper book of his office, and forward a copy thereof to the Clerk of the Court to which the reference is made. Upon the filing of a copy of such order with the Clerk of the Court, either party may commence an action in said Court to determine the conflict, and the Court shall have full and complete jurisdiction to hear and determine the same. Unless an action shall be commenced within ninety days after the copy of the order of reference shall have been filed with the Clerk of the Court, the party making such demand, or the adverse claimant, if the case is referred without demand, shall be deemed to have waived and surrendered his or her right to purchase, and the Surveyor General or Register shall proceed as though his or her application had not been made. [Amendment in effect April 6, 1880.]

SEC. 4. All lands sold under the provisions of this Act shall be sold for the sum of two dollars and fifty cents per acre, in United States gold coin, payable to the Treasurer of the county in which the lands are situated, within fifty days from the date of the approval by the Surveyor General; and in case said payment is not made within said fifty days, the land described in the location shall revert to the State without suit, and said location shall be and become null and void. All payments made to the County Treasurer as above provided, shall be paid over and accounted for as other moneys received for State lands are required to be paid over and accounted for.

SEC. 5. The Surveyor General and Register shall, in the matter of approving locations, issuing certificates of purchase or patents, or in other proceedings relating to the sale of lands of a mineral character, which proceedings are not provided for in this Act, proceed in the same manner as is now provided for the sale of sixteenth and thirty-sixth sections which are not of a mineral character.

SEC. 6. All patents issued by the State to any portion of

any sixteenth or thirty-sixth section, shall be subject to any vested and accrued water rights, ditches, and reservoirs, used in connection therewith, acquired by priority of possession under local customs, and the decisions of the Courts, and the right of way for the construction of ditches and canals, for mining and other purposes, over all of the sixteenth and thirty-sixth sections owned by the State, is hereby granted and confirmed.

SEC. 7. After the passage of this Act, no patent shall be issued by the State for any of the lands described in this Act, upon which, at the time of the application therefor, there was and still is any actual bona fide mining claim, except to the person who is the owner of such mining claim, under local mining customs, and not to such owner in excess of forty acres; and when an applicant for such lands, not owning such mining claim, shall have paid the purchase money therefor, in whole or in part, he may present his certificate of purchase, and receive in exchange therefor, from the Register, a certificate showing the whole amount paid; and the Controller, upon the surrender of such certificate, must draw his warrant in favor of the person surrendering such certificate, for the amount therein specified, on the Treasurer of State, who must pay the same out of the fund into which the purchase money was paid; *provided*, that the owner of such mining claim, under such mining customs, shall apply to purchase the same within six months after the plat of the township containing such land shall have been filed in the local United States Land Office, or within ten months after the passage of this Act; *and provided, further*, that any owner of a bona fide mining claim, who shall have entered into an agreement with the applicant for any portion of the sixteenth or thirty-sixth section upon which said mining claim is situated, for the procurement of a title for the same, shall not avail himself of the provisions of this section. The Governor of this State shall not sign any patent contrary to the provisions of this Act.

SEC. 8. All Acts and parts of Acts in conflict with this Act are hereby repealed. [In effect March 28, 1874. Stats. 1873-4, p. 766.]

An Act to locate the county seat of Solano County.

SECTION 1. The county seat of Solano County shall be at Fairfield, in said county.

SEC. 2. The Board of Supervisors of Solano County, within twenty days from the passage of this Act, shall cause the archives, county records, books, maps, papers, furniture, and all other movable personal property belonging to said county, to be removed to the county seat established by this Act; and for the purpose of executing this provision, a special meeting

of said Board shall be called in the manner prescribed by law.

SEC. 3. All Acts or parts of Acts in conflict herewith are hereby repealed. [In effect March 28, 1874.]

An Act to permanently locate the county seat of Fresno County.

SECTION 1. From and after the first day of October, A.D. 1874, the county seat of Fresno County shall be located at the Town of Fresno; *provided*, the Board of Supervisors may have power to move said county seat to the said Town of Fresno at any time prior to said first day of October, A.D. 1874, if in their judgment they may deem it necessary and advisable.

SEC. 2. The Board of Supervisors of Fresno County are authorized to forthwith proceed to erect suitable buildings in the Town of Fresno for county purposes. [In effect March 30, 1874. Stats. 1873–4, p. 913.]

An Act to establish the county line between the Counties of Fresno and Tulare.

SECTION 1. The boundary line between the Counties of Fresno and Tulare shall be as follows: Commencing at a point on the eastern boundary line of Monterey County, as described in section three thousand nine hundred and forty-eight of Political Code, being on the summit of coast range, which point is south forty-five degrees west from the point on Kings River where the northern line of township sixteen south crosses the same; thence north forty-five degrees east to said point on Kings River; thence east along northern line of township sixteen south, and continuing on said line to the northwest corner of township sixteen south, range twenty-five (25) east; thence north to the northwest corner of township fifteen (15) south, range twenty-five (25) east; thence east to the northeast corner of township fifteen south, range twenty-seven (27) east; thence north to the northeast corner of township fourteen south of range twenty-seven east; thence east on the line between township thirteen and fourteen south to the summit of Sierra Nevada, being the western line of Inyo County.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed. [In effect March 23, 1876.]

An Act to prevent discrimination against female teachers.

SECTION 1. Females employed as teachers in the public schools of this State, shall in all cases receive the same compensation as is allowed male teachers for like services, when holding the same grade certificates. [In effect March 30, 1874. Stats. 1873–4, p. 938.]

An Act to provide for the purchase of certain supplies for State officers and members of the Legislature.

SECTION 1. The State Board of Examiners is hereby constituted ex officio a Furnishing Board, with the powers and duties hereinafter specified.

SEC. 2. It shall be the duty of said Board, as often as it shall become necessary, to advertise for twenty days in two daily newspapers published in the City of San Francisco, and one daily newspaper published in the City of Sacramento, for sealed proposals to furnish stationery, blank books, material for lights, fuel, and such other articles necessary for the use of said State and legislative officers as are entitled thereto, or any of them; and said Board shall specify in said advertisement the amount and kinds of each article desired, samples or minute descriptions of which shall accompany and be deposited, with the sealed proposals for furnishing the same, in the office of the Secretary of State; and all proposals received as aforesaid shall be opened and compared by said Board, any two of whom shall constitute a quorum, at the Governor's office, at twelve o'clock M. of the day specified in the said advertisement; and the said Board shall then and there award the contract for furnishing said supplies, or any of them, to the lowest bidder, whose sealed bid shall be accompanied by a bond, with two or more sureties, in the sum of $——, the sum to be not less than twice the amount of the value of the articles to be supplied, payable to the people of the State of California, conditioned that if the bidder shall receive the award of said contract he will, in ten days thereafter, deliver the supplies or articles for which he has been awarded the contract; *provided*, that in their said advertisement said Board may classify said supplies and articles, and may receive bids and award contracts for such separate articles or class of supplies as they shall deem the lowest and best; *provided further*, that said Board may require any class or articles of said supplies to be delivered in installments, and paid for on delivery; *provided further*, that any and all bids which shall be deemed too high by said Board, may be declined, in which case said Board shall again advertise for sealed proposals to furnish the classes or articles of supply so declined, and so on for the same cause, as often as it shall occur; *and provided further*, that in such case said Board may purchase any articles or supplies for which bids have been rejected as aforesaid, in open market, and in amounts sufficient for immediate necessities, but at prices not exceeding the lowest prices in the bids rejected.

SEC. 3. It shall be the duty of the Secretary of State, immediately after the passage of this Act, to take a full and complete inventory of all stationery, blank books, and other arti-

cles and supplies aforesaid, then on hand, and enter the same in a set of books to be kept for that purpose, making a separate account for each class of articles; and in like manner he shall enter in said books a detailed and classified account of all purchases of articles and supplies authorized by this Act, showing the amount and cost of each article and class of supplies purchased, the amount and cost of each class issued, amount and cost of each article and class issued to each State officer and member of the Legislature, and amount and cost of each article and class on hand. He shall issue the supplies aforesaid only upon the requisition of the proper officer, and shall take a receipt for the same upon delivery, which requisition and receipt shall be filed and preserved in his office.

SEC. 4. It shall be the duty of said Board, at the end of each fiscal year, and at such other times as they shall deem necessary, to cause an inventory to be taken of all the articles and classes of said supplies on hand and contracted for, and to make an examination of the amounts and vouchers appertaining to the same.

SEC. 5. It shall be the duty of said Board, at least one month previous to the assembling of each Legislature, to advertise, in accordance with section two of this Act, for a supply of stationery, fuel, and such other articles as shall be sufficient for the use of the State officers and members of the Legislature, or necessary for the public service, and at the commencement of each session said Board shall report to the Legislature a full account of their receipts and expenditures, and stock of supplies on hand.

SEC. 6. The actual expenses incurred by said Board in executing the powers and discharging the duties prescribed and imposed in this Act, when certified by them, shall be audited by the Controller, and paid by the Treasurer of said State out of any money which shall have been appropriated for that purpose; *provided*, nothing in this Act shall be construed as allowing salary or compensation to said Furnishing Board for any service performed as such Board.

SEC. 7. All Acts and parts of Acts in conflict with this Act are hereby repealed. [Approved March 16, 1876. Stats. 1875–6, p. 314.]

An Act concerning special elections.

SECTION 1. At any special election to be held in any county, except in the City and County of San Francisco, copies of the Great Register of such county, and in the City and County of San Francisco copies of the ward registers of said city and county, which were printed before and used at the next preceding general election, shall be used.

SEC. 2. Before the day on which said special election is appointed to be held, the Board of Supervisors of the county, except the City and County of San Francisco, must furnish the Board of Election of each precinct in the county at least one copy of the aforesaid printed Great Register; and the Board of Supervisors of the City and County of San Francisco must furnish the Board of election of each precinct in the county at least one copy of the ward register of the ward in which the precinct is located. If the Board cannot otherwise obtain a sufficient number of copies of the register for the purpose, it must take the copies filed in the office of the County Clerk, in pursuance of section twelve hundred and sixty-eight of the Political Code.

SEC. 3. If the copy of the register which shall be furnished to any precinct shall have been used at a previous election, the letter "V" may be used instead of the word "Voted," as required by section twelve hundred and twenty-eight of the Political Code.

SEC. 4. It shall not be the duty of the Board of Election to post copies of the Great Register, as required by section eleven hundred and forty-nine of the Political Code.

SEC. 5. The voter, when he offers his ballot at a polling place, shall not be required to announce his number on the Great Register, as provided for in section twelve hundred and twenty-five of the Political Code. [In effect February 9, 1878. Stats. 1877–8, p. 73.]

An Act to prevent the circulation of bogus election tickets, and to prevent frauds upon voters.

SECTION 1. It shall hereafter be lawful for the State Central or other managing committee of any political party having a State organization, and for the city or county or other managing committee of any municipal or local party, before each election in this State, to prepare and adopt, by engraving or otherwise, a ticket vignette, or heading, with an appropriate inscription, to be printed at the top of the ticket of the party, on the inside thereof, as a distinctive and characteristic heading thereto. Such vignette shall not be more than two inches high by four and a half inches wide, and in addition to the device adopted shall set forth legibly the fact that the ticket is the regular ticket of the party, with the name thereof. It shall also show the district, ward, or precinct where such ticket may be lawfully voted. Said vignette and inscription shall stand at the head of the ticket, on the inside thereof, and be followed within a space not to exceed one half of an inch, by the word "For" on the first line thereof, and the names of candidates and offices shall then be printed below in the order and manner provided for in section eleven hundred and ninety-one of the

Political Code. The length of the tickets to be used at elections in this State hereafter shall, in case the length of tickets now allowed by law is insufficient to permit of the printing of such vignette, or heading, and have sufficient margin at the top and bottom, and not otherwise, be increased two inches in addition to the length prescribed by section one thousand one hundred and ninety-one of the Political Code, in order to allow space for said vignette and inscription.

SEC. 2. When such vignette and inscription have been adopted and prepared, an impression of the same, followed by the regular ticket of such party, printed so as to constitute a lawful election ballot, and sealed up in an envelope, may be filed with the County Clerk of the county at any time before the opening of the polls on election day. Such ballot shall be kept by said Clerk on deposit, and from the time of said filing it shall be unlawful for any person to imitate, copy, or in any manner counterfeit the same. Any person violating the foregoing provision shall be deemed guilty of a misdemeanor, and on conviction punished accordingly.

SEC. 3. Any person who shall knowingly print, circulate, or distribute, any ticket, or tickets, ballot, or voting paper, having therein, or thereon, the vignette, or an imitation of the vignette or inscription, of any ballot or ticket so filed with the County Clerk, but containing the name or names of any candididate or candidates, other or different from the name or names, candidate or candidates, upon the ballot or ticket of such party so filed or deposited with said Clerk, shall be deemed guilty of a misdemeanor, and on conviction punished accordingly; *provided*, that nothing in this Act shall be construed to interfere with the right of any elector to erase or insert any name or proposition upon said ticket, if done in writing.

SEC. 4. Hereafter all tickets, in addition to the matters provided for in section eleven hundred and ninety-one of the Political Code, and immediately above the word "For," as specified in said section, shall show the name or number of the district, ward or precinct where the same is to be used, and if such name or number is not contained in the party vignette (as it must be if one is used), then the same shall be printed in capital letters, so as to take up not more than two inches of space, which in all cases shall be added to the lengths of the tickets as established by said section of the Political Code; *provided*, that the provision of this section shall not be compulsory except in the City and County of San Francisco. [Approved March 7, 1878. Stats. 1877-8, p. 180.]

An Act to define the duties of Inspectors of Rifle Practice of the National Guard of California.

SECTION 1. It shall be the duty of the General Inspector of Rifle Practice to exercise general supervision over the rifle practice of the National Guard; to inspect, or cause to be inspected, from time to time, all ranges and practice grounds, and see that the prescribed regulations for rifle practice are carried out by the National Guard, and that the proper returns thereof are made out; to report direct to general headquarters from time to time the improvement in marksmanship among the uniformed forces, together with all other matters pertaining to his duties. Commandants of brigades, regiments, and companies shall furnish to the General Inspector of Rifle Practice such information as he shall require in regard to the rifle practice of their commands, and as to the number and condition of all targets or other military property of the State issued to their respective commands for use in rifle practice; and if, at the conclusion of his inspection of any armory, range, or practice grounds, he shall find any property appertaining to rifle practice which ought to be kept therein, missing, injured, unfit for use, or deficient in any respect, or that such range or practice ground is dangerous, he shall forthwith report the facts in respect thereto to general headquarters. He may, from time to time, examine the officers upon the theory and practice of marksmanship, and upon the system of instruction of rifle practice. It shall be his duty to attend, as far as practicable, all general competitions in marksmanship among the National Guard, and see that such competitions are conducted with fairness and according to prescribed regulations. He shall make an annual report to general headquarters, in which he shall state the result of all competitions in marksmanship, with the names of the winners, together with such suggestions as he may see fit.

SEC. 2. The Brigade Inspector of Rifle Practice shall have supervision of all matters appertaining to rifle practice, within the limits of their respective brigades, under the directions of the brigade commander, as prescribed for the General Inspector of Rifle Practice. They shall report to such General Inspector of Rifle Practice, whenever required by him, the condition of rifle practice in their respective brigades, and what practice of that description has been carried on during any period; and shall also, at his request, report to him upon any matter relating to rifle practice which may require examination, within their respective brigades. They shall attend the competitions for any prizes that may be offered by the State to the command to which they are attached, or that may be arranged between any of the companies of their brigades, and see that the same are conducted with fairness, and according to the prescribed

regulations for such competitive matches, and report to the General Inspector of Rifle Practice the result of all such competitions, with the names of the winners, together with such suggestions as they may see fit to make.

SEC. 3. The Regimental and Battalion Inspectors of Rifle Practice shall have supervision of all matters appertaining to rifle practice, within the limits of their respective regiments or battalions, as prescribed for the Brigade Inspector of Rifle Practice; they shall report to said Brigade Inspector of their respective brigades the condition of rifle practice in their respective regiments or battalions, and what practice has been carried on during any period, and shall also, at his request, report to him upon any matter relating to rifle practice which may require examinations, within their respective regiments or battalions. They shall attend the competitions for any prize that may be offered, or that may be arranged between any of the companies of their respective regiments or battalions, and see that the same are conducted with fairness and according to the prescribed regulations for such competitive matches, and report to the Brigade Inspector of Rifle Practice the result of all such competitions, with the names of the winners, together with such suggestions as they may see fit. [In effect March 30, 1878. Stats. 1877-8, p. 758.]

An Act to continue in force school teachers' certificates, State educational diplomas, and life diplomas.

SECTION 1. All teachers' city, city and county, county, and State certificates, State educational diplomas, life diplomas, and all other teachers' certificates and diplomas issued in the State of California, under and in pursuance of the laws therof, on or before the thirty-first day of December, A.D. eighteen hundred and seventy-nine, shall be and the same are hereby continued in full force and effect, and shall be deemed valid for all purposes and to the full extent of time that the same were and were intended respectively to be under the said laws, on and before the said thirty-first day of December, A.D. eighteen hundred and seventy-nine. [In effect February 5, 1880. Stats. 1880, p. 4; Ban. Ed. p. 7.]

An Act to continue in operation the public schools of this State.

SECTION 1. The County Superintendent of Schools of each and every county in this State is hereby empowered to issue a temporary certificate to any teacher whose certificate has expired or shall expire between the first day of January, eighteen hundred and eighty, and the first day of June, eighteen hundred and eighty. The certificate so granted shall be of the same grade as the one in place of which it is

issued, and shall be valid only until the first meeting of the Board which shall be competent to issue teachers' certificates. [In effect March 6, 1880. Stats. 1880, p. 7; Ban. Ed., p. 14.]

An Act in relation to the currency of the United States.

SECTION 1. All legal tender notes heretofore issued, or which may hereafter be issued by the Government of the United States of America, as legal tender notes, shall be received at par in payment for all taxes due or to become due to this State, or to any county or municipal corporation thereof, and such notes shall be a legal tender for all debts, dues, and demands between citizens of this State.

SEC. 2. All Acts, and the provisions of any Act or parts of Acts conflicting with this Act, are hereby repealed. [In effect March 12, 1880. Stats. 1880, p. 8; Ban. Ed., p. 28.]

An Act relating to the appointment of aliens to positions under State, county, city and county, city or town officials.

SECTION 1. No person shall be employed as a deputy or clerk in any public office of the State, or of any county or municipality therein, who is not a citizen of the United States. [In effect April 3, 1880. Stats. 1880, p. 23; Ban. Ed., p. 116.]

An Act to provide for the management of the "Yosemite Valley and the Mariposa Big Tree Grove."

SECTION 1. The Governor of the State of California and the eight other Commissioners appointed by him, in accordance with the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and the land embracing the Mariposa Big Tree Grove," approved June thirteenth, eighteen hundred and sixty-four, shall constitute a Board to manage such premises, and the Governor shall be ex officio member of the Commission and President of the Board. The term of office of said Commissioners shall be four years; *provided*, that the eight first appointed shall so classify themselves that four shall go out of office in two years, and four in four years; and hereafter the appointments shall be made four each two years. Vacancies occurring in said Commission from death, resignation, or other causes, shall be filled by appointment by the Governor, to serve for the unexpired term only.

SEC. 2. The Commissioners shall be known as the "Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," and they and their successors shall have power to sue and be sued, and have full power to manage and administer the grant made and the trust created by said Act

of Congress, and to make and adopt all rules, regulations, and by-laws for their own government, and government, improvement, and preservation of such premises.

SEC. 3. The principal place of business shall be in the said Yosemite Valley, in the County of Mariposa, and they shall meet at their office in said valley on the first day of June of each year, and may meet thereat oftener when a majority of the Commissioners deem it expedient to do so. The said Commissioners shall receive no compensation, other than necessary traveling expenses incurred in performing the duties of the Board as prescribed in this Act.

SEC. 4. Such Commissioners shall meet on the twentieth day of April, eighteen hundred and eighty, at the State Capitol, for organization, and at such meeting they shall elect a suitable person to act as guardian of said Yosemite Valley and Mariposa Big Tree Grove, and shall not be one of said Commissioners. Said guardian shall be at the office of the Commissioners in said county at all times, unless it shall be otherwise ordered by a majority of the Commissioners, and shall hold his position during the pleasure of the Commissioners electing him. Such guardian shall receive the sum of one hundred and twenty-five dollars per month, payable monthly, which salary shall be paid from the State Treasury in the same manner as the salaries of State officers are paid. All moneys, rents, or profits derived from said grant and premises shall be expended in improvements in said valley by order of the Commissioners, and under the supervision of said guardian.

SEC. 5. The said Commission shall, immediately after organizing, demand from the Commissioners now acting all the books, papers, and documents of any and every kind pertaining to the business of said Board, and it shall be the duty of the Commissioners now acting to immediately comply with said demand.

SEC. 6. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed. [In effect April 15, 1880. Stats. 1880, p. 44; Ban. Ed., p. 205.]

An Act to organize and define the powers of the Board of Railroad Commissioners.

SECTION 1. The three persons elected Railroad Commissioners, pursuant to the provisions of section twenty-two of article twelve of the Constitution of this State, constitute, and shall be known and designated as the "Board of Railroad Commissioners of the State of California." They shall have power to elect one of their number President of said Board, to appoint a Secretary, to appoint a Bailiff, who shall perform the duties of Janitor; also, to employ a Stenographer, whenever they may deem it expedient.

SEC. 2. The salary of each Commissioner shall be four thousand dollars per annum; the salary of the Secretary shall be twenty-four hundred dollars per annum; the salary of the Bailiff shall be twelve hundred dollars per annum, such salaries to be paid by the State of California in the same manner as the salaries of State officers are paid. The Stenographer shall receive a reasonable compensation for his services, the amount to be fixed by the State Board of Examiners, and paid by the State. Said Commissioners, and the persons in their official employment when traveling in the performance of their official duties, shall have their traveling expenses, other than transportation, paid, the amounts to be passed on by the State Board of Examiners, and paid by the State. Said Board of Railroad Commissioners shall be allowed one hundred dollars per month for office rent, and fifty dollars per month for fuel, lights, postage, expressage, subscription to publications upon the subject of transportation, and other incidental expenses, to be paid by the State; *provided*, that all moneys remaining unexpended at the expiration of each fiscal year shall be returned to the State Treasury. Said Board is further authorized to expend not to exceed four hundred dollars for office furniture and fixtures, to be paid by the State. The State shall furnish said Board with all necessary stationery and printing, upon requisitions signed by the President of said Board.

SEC. 3. Said Commissioners and the persons in their official employment, shall, when in the performance of their official duties, have the right to pass free of charge on all railroads, steamers, ships, vessels, and boats, and on all vehicles, employed in or by any railroad or other transportation company engaged in the transportation of freight and passengers within this State.

SEC. 4. It shall be the duty of the Attorney General, and the District Attorney in every county, on request of said Board, to institute and prosecute, and to appear and to defend for said Board, in any and all suits and proceedings which they or either of them shall be requested by said Board to institute and prosecute, and to appear in all suits and proceedings to which the Board is a party, shall have precedence over all other business except criminal business; *provided*, that said Board shall have the power to employ additional counsel to assist said Attorney General, or said District Attorney, or otherwise, when in their judgment the exigencies of the case may so require. The fees and expenses of said additional counsel to be determined by the State Board of Examiners, and paid by the State.

SEC. 5. The office of said Board shall be in the City of San Francisco. Said office shall always be open (legal holidays

and non-judicial days excepted). The Board shall hold its sessions at least once a month in said City of San Francisco, and at such other times and such other places within this State as may be expedient. The sessions of said Board shall be public, and when held at a place other than the office in the City of San Francisco, notice thereof shall be published once a week for two successive weeks before the commencement of such session, in a newspaper published in the county where such session is to be held; and if no newspaper is published in such county, then in a newspaper published in an adjacent county. Such publication to be paid by the State in the manner as other publications authorized by law are paid.

SEC. 6. The Board shall have a seal, to be devised by its members, or a majority thereof. Such seal shall have the following inscription surrounding it: "Railroad Commission, State of California." The seal shall be affixed only to, first, writs; second, authentications of a copy of a record or other proceeding, or copy of a document on file in the office of said Commission.

SEC. 7. The process issued by said Board shall extend to all parts of the State. The Board shall have power to issue writs of summons and of subpœna in like manner as Courts of record. The summons shall direct the defendant to appear and answer within fifteen days from the day of service. The necessary process issued by the Board may be served in any county in this State by the Bailiff of the Board, or by any person authorized to serve process of Courts of record.

SEC. 8. The Secretary of said Board shall issue all process and notices required to be issued, and do and perform such other duties as the Board may prescribe. The Bailiff shall preserve order during the sessions of said Board, and shall have authority to make arrests for disturbances. He shall also have authority, and it shall be his duty, to serve all process, orders, and notices issued by said Board when directed by the President, and make return of the same.

SEC. 9. All complaints before said Board shall be in writing and under oath. All decisions of said Board shall be given in writing, and the grounds of the decisions shall be stated. A record of the proceedings of said Board shall be kept, and the evidence of persons appearing before said Board shall be preserved.

SEC. 10. Whenever the Board shall render any decision within the purview and pursuant to the authority vested in said Board by section twenty-two of article twelve of the Constitution, said Board, or the person, copartnership, company, or corporation making the complaint upon which such decision was rendered is authorized to sue upon such decision in any Court of competent jurisdiction in this State.

SEC. 11. Whenever said Board, in the discharge of its duties, shall establish or adopt rates of charges for the transportation of passengers and freight, pursuant to the provisions of the Constitution, said Board shall serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and upon such service, it shall be the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said Board shall also make such further publication thereof as they shall deem proper and necessary for the public good. If the party to be served, as hereinbefore provided, be a corporation, such service may be made upon the President, Vice President, Secretary, or managing agent thereof, and if a copartnership, upon any partner thereof. The rates of charges established or adopted by said Board, pursuant to the Constitution and this Act, shall go into force and effect on the twentieth day after service of said schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby, as hereinbefore provided.

SEC. 12. When jurisdiction is, by the Constitution, conferred on the Board of Railroad Commissioners, all the means necessary to carry it into effect are also conferred on said Board, and when in the exercise of jurisdiction within the purview of the authority conferred on said Board by the Constitution the course of proceeding be not specifically pointed out, any suitable process or mode of proceeding may be adopted by the Board which may appear most conformable to the spirit of the Constitution.

SEC. 13. The said Board shall, immediately after entering upon the performance of its duties, demand and receive from the Transportation Commissioner, appointed under an Act approved April first, eighteen hundred and seventy-eight, section nine, chapter one, all public property belonging to the office of said Transportation Commissioner, in his possession, or under his control, and it is hereby made his duty to deliver the same to the said Board.

SEC. 14. The term "transportation companies" shall be deemed to mean and include:

First—All companies owning and operating railroads (other than street railroads) within this State.

Second—All companies owning and operating steamships engaged in the transportation of freight or passengers from and to ports within this State.

Third—All companies owning and operating steamboats

used in transporting freight or passengers upon the rivers or inland waters of this State.

The word "company," as used in this Act, shall be deemed to mean and include corporations, associations, partnerships, trustees, agents, assignees, and individuals. Whenever any railroad company owns and operates in connection with its road and for the purpose of transporting its cars, freight, or passengers, any steamer or other water craft, such steamer or other water craft shall be deemed part of its said road. Whenever any steamship or steamboat company owns and operates any barge, canal boat, steamer, tug, ferry boat, or lighter, in connection with its ships or boats, the things so owned and operated shall be deemed to be part of its main line.

SEC. 15. The salaries of the Commissioners, Secretary, Bailiff, and all other officers and attachés in any manner employed by the Board of Commissioners, and all expenses of every kind created under this Act, shall be paid out of any money in the General Fund not otherwise appropriated, and the Controller of State is hereby authorized and directed to draw his warrants from time to time for such purposes, and the State Treasurer is hereby authorized and directed to pay the same. [In effect April 15, 1880. Stats. 1880, p. 45; Ban. Ed., p. 205.]

An Act to provide for the management and control of the State Agricultural Society by the State.

SECTION 1. The State Agricultural Society is hereby declared to be a State institution.

SEC. 2. Within ten days after the passage of this Act, the Governor shall appoint twelve resident citizens of the State who shall, when organized, constitute a State Board of Agriculture, who shall, except as hereinafter provided, hold office for the term of four years, and until their successors are appointed and qualified. Vacancies occurring from any cause in the Board shall be filled by appointment of the Governor for the unexpired term of the office vacated.

SEC. 3. Within ten days after their appointment, the persons so appointed shall qualify, as required by the Constitution, and shall meet at the office of the State Agricultural Society and organize by the election of one of their number as President of the Board and said Society, who shall hold said office of President for the term of one year, and until his successor is elected and qualified. The Board shall also elect a Secretary and Treasurer, not of their number, who shall each hold office at the discretion of the Board.

SEC. 4. At the same meeting the members of the Board shall, by lot or otherwise, classify themselves into four classes of three members each. The terms of office of the first class

shall expire at the end of the first fiscal year; of the second class, of the second year; of the third class, of the third year; of the fourth class, at the end of the full term of four years. The fiscal year shall be from the first of February to the first of February.

SEC. 5. The State Board of Agriculture shall be charged with the exclusive management and control of the State Agricultural Society as a State institution; shall have possession and care of its property, and be intrusted with the direction of its entire business and financial affairs. They shall define the duties of the Secretary and Treasurer, fix their bonds and compensation, and shall have power to make all necessary changes in the Constitution and rules of the Society; to adapt the same to the provisions of this Act, and to the management of the Society, its meetings, and exhibitions. They shall provide for an annual fair or exhibition by the Society of all the industries and industrial products of the State, at the City of Sacramento; *provided*, that in no event shall the State be liable for any premium awarded or debt created by said Board of Agriculture.

SEC. 6. The Board shall have power to appoint all necessary Marshals and police to keep order and preserve peace at the annual fairs of the Society, and the officers so appointed shall be vested with the same authority for the preservation of order and peace, on the grounds and in the buildings of the Society, that executive peace officers are vested with by law.

SEC. 7. Said Board shall use all suitable means to collect and disseminate all kinds of information calculated to educate and benefit the industrial classes, develop the resources, and advance the material interests of the State, and shall, on or before the first day of February of each year, report to the Governor a full and detailed account of their transactions, statistics, and information gained, and also a full financial statement of all funds received and disbursed. They shall also make such suggestions and recommendations as experience and good policy may dictate for the improvement and advancement of the agricultural and kindred industries.

SEC. 8. The Superintendent of State Printing shall, each year, print and bind in cloth four thousand volumes of said transactions, and deliver the same to said Board of Agriculture for distribution and exchange. He shall also do such job printing as said Board may require to carry out the provisions of this Act.

SEC. 9. The Directors or Boards of Managers of each county and district agricultural society or association, and of each county, district, or State horticultural and stock-breeding association or society, organized and acting under the laws of this State, shall report annually, on or before the first day of April, to the State Board of Agriculture, the name and post

office address of each officer of such society or association; and on or before the first day of December shall report to said Board of Agriculture the transactions of said society, including the premiums offered, the list of stock and articles exhibited, and the premiums paid; the amount of receipts and expenditures for the year, the new industries inaugurated, and any and all facts and statistics showing the development and extent of the industries, products, and resources of the county or district embraced within the management of such society or association; *provided*, that the provisions of this Act shall not apply to any Board of Commissioners or other body organized under the laws of this State, the object of which is to promote vinicultural industries, unless such Board or body shall voluntarily request the privilege of making such reports as are called for by this Act, in which case such Board or body shall enjoy equal privileges as are accorded to other institutions devoted to agriculture.

SEC. 10. To facilitate such reports, the State Board of Agriculture shall have prepared, and shall furnish such societies with necessary schedules and blanks for such reports, and said State Board shall include such reports from societies and associations, or so much thereof as they may deem advisable, in their report to the Governor.

SEC. 11. When said State Board of Agriculture shall have been organized and classified as provided herein, the Secretary of the Board shall report such organization and classification to the Governor. He shall also report any vacancy that may occur in said Board at any time.

SEC. 12. All laws and parts of laws in conflict with this Act are hereby repealed. [In effect April 15, 1880. Stats. 1880, p. 49; Ban. Ed., p. 212.]

An Act for the promotion of the viticultural industries of the State.

SECTION 1. There shall be appointed by the Governor a Board of State Viticultural Commissioners, to consist of nine members, two to be appointed from the State at large, and one to be appointed from each of the seven viticultural districts, which shall be constituted as follows:

First—The Sonoma District, which shall include the Counties of Sonoma, Marin, Lake, Mendocino, Humboldt, Del Norte, Trinity, and Siskiyou.

Second—The Napa District, which shall include the Counties of Napa, Solano, and Contra Costa.

Third—The San Francisco District, which shall include the City and County of San Francisco, and the Counties of San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey.

Fourth—The Los Angeles District, which shall include the Counties of Los Angeles, Ventura, Santa Barbara, San Luis Obispo, San Bernardino, and San Diego.

Fifth—The Sacramento District, which shall include the Counties of Sacramento, Yolo, Sutter, Colusa, Butte, Tehama, and Shasta.

Sixth—The San Joaquin District, which shall include the Counties of San Joaquin, Stanislaus, Merced, Fresno, Tulare, and Kern.

Seventh—The El Dorado District, which shall include the Counties of El Dorado, Amador, Calaveras, Tuolumne, Mariposa, Placer, Nevada, Yuba, Sierra, Plumas, Lassen, Modoc, Alpine, Mono, and Inyo.

SEC. 2. The Commissioners, excepting the two appointed from the State at large, shall be residents of the districts from which they are appointed, and shall be specially qualified by practical experience and study in connection with the industries dependent upon the culture of the grapevine in this State. They shall each hold office for the term of four years, excepting that, of the nine first appointed, four, to be determined by lot, shall retire at the end of two years, when their successors shall be appointed by the Governor.

SEC. 3. The Board shall elect from among their own number a President, a Vice President, and a Treasurer, and they shall appoint a Secretary, who shall not be one of their number, and whose salary shall not exceed one hundred dollars per month. And the Board shall determine and fix the amount of bonds that shall be given by the Treasurer and Secretary for the faithful performance of their duties.

SEC. 4. It shall be the duty of the Board to meet semi-annually to consult and to adopt such measures as may best promote the progress of the viticultural industries of the State. It shall be their duty to select and appoint competent and qualified persons to deliver at least one lecture each year in each of the viticultural districts named in section one of this Act, for the purpose of illustrating practical viticultural topics, and imparting instruction in methods of culture, pruning, fertilizing, fermenting, distilling, and rectifying, treating diseases of the vine, raisin drying, etc., for the better instruction of the people interested therein, as the requirements of each district may show to be necessary and important, and to disseminate all such useful knowledge relating to viticulture by printed documents or correspondence as may be within their power to do. The Board shall devote especial attention to the study of the phylloxera and other diseases of the vine, and shall make such recommendations in their semi-annual reports as they may deem best for the protection of vineyards.

SEC. 5. The Commissioners constituting the Board shall serve without compensation, and shall be allowed only their actual transportation expenses to and from their places of residence when attending the semi-annual meetings of the Board.

SEC. 6. The office of the Board shall be in the City of San Francisco, and shall be kept open to the public, subject to the rules of the Board, every day, excepting legal holidays, and shall be in charge of the Secretary during the absence of the Board.

SEC. 7. It shall be the duty of the Secretary to attend all regular meetings of the Board, and to preserve records of proceedings and correspondence; to collect books, pamphlets, periodicals, and other documents containing valuable information relating to viticulture, and to preserve the same; to collect statistics and other information, showing the actual condition and progress of viticulture in this State and elsewhere; to collect information concerning lands suitable for viticulture, and to impart to the public, upon proper demands being made, information concerning the localities of such lands, prices, cost of cultivation, and means of transportation: *provided*, that he shall receive no fees for such services; to correspond with agricultural and viticultural societies, colleges, and schools of agriculture, and other persons and bodies, political or private, and to disseminate information, printed or otherwise, as he may be directed by the Board of Commissioners; and to prepare, as required by the Board, semi-annual reports for publication.

SEC. 8. And for the further promotion of viticultural interests, it shall be the duty of the Board of Regents of the University of California to provide for special instruction to be given by the Agricultural Department of the University in the arts and sciences pertaining to viticulture, the theory and practice of fermentation, distillation, and rectification, and the management of cellars, to be illustrated by practical experiments with appropriate apparatus; also, to direct the Professor of Agriculture, or his assistant, to make personal examinations and reports upon the different sections of the State adapted to viticulture; to examine and report upon the woods of the State procurable for cooperage, and the best methods of treating the same; and to make analysis of soils, wines, brandies, and grapes, at the proper request of citizens of the State; also, to prepare a comprehensive analysis of the various wines and spirits produced from grapes, showing their alcoholic strength and other properties, and especially any deleterious adulterations that may be discovered. The Regents shall also cause to be prepared, printed, and distributed to the public, quarterly reports of the Professor in charge of this work relating to experiments undertaken, scientific discov-

eries, the progress and treatment of the phylloxera and other diseases of the vine, and such other useful information as may be given for the better instruction of viticulturists.

SEC. 9. The Board of Regents of the University shall be authorized to receive and accept donations of lands suitable for experimental vineyards and stations, and shall submit in their next annual report an economical plan for conducting such vineyards, and for the propagation and distribution of specimens of all known and valuable varieties of grapevines.

SEC. 10. There is hereby appropriated, for the purposes mentioned in this Act, the sum of seven thousand dollars, to be apportioned as follows: For the necessary and contingent expenses of the Board of State Viticultural Commissioners, four thousand dollars, and for the University of California, three thousand dollars; and the State Controller shall draw his warrants upon the State Treasurer in favor of the Treasurers of the said Board of State Viticultural Commissioners, and of the University of California, for the amounts of four thousand and three thousand dollars respectively, as hereby appropriated, upon proper demand being made for the same; *provided*, that the said Board of State Viticultural Commissioners shall, in the month of December, submit to the Governor annual statements, duly verified by the oaths of the President and Treasurer, and attested by the Secretary of said Board, showing in detail the manner in which moneys received from the State have been expended, and also the amount remaining unexpended, together with an estimate of expenses for the ensuing year, beginning on the first day of July next thereafter. [In effect April 15, 1880. Stats. 1880, p. 52; Ban. Ed., p. 224.]

An Act providing for appeals from orders forming reclamation or swamp land districts, setting off lands from such districts, or consolidating districts.

SECTION 1. Any person having an interest affected by an order of the Board of Supervisors of any county, approving a petition for forming a reclamation or swamp land district, or in any manner creating a district, or setting off lands from a district, or consolidating districts, may appeal therefrom, within thirty days after said order is made, to the Superior Court of the county. Such appeal shall be taken and prosecuted in the manner prescribed by the rules of said Superior Court, and shall be tried anew. The judgment of the Superior Court shall be final. Each Superior Court in the State, in which there are any swamp land or reclamation districts, shall make rules regulating appeals in the cases hereinbefore mentioned. [In effect April 16, 1880. Stats. 1880, p. 119; Ban. Ed., p. 385.]

An Act to promote drainage.

SECTION 1. The Governor, Surveyor General, and State Engineer, shall be ex officio members of and constitute a Board of Drainage Commissioners to divide the State into several drainage districts, and organize the same as hereinafter provided. The Governor shall be President of the Board, and the office of the Board shall be in the State Engineer's office at the State Capitol. The Secretary to the State Engineer shall be Secretary of the Board.

SEC. 2. Within thirty days after the passage of this Act, or as soon thereafter as may be practicable, the State Engineer shall submit to said Board a report or reports containing the result of his investigations as to drainage, having in view the control of debris from mining and other operations, the improvement and rectification of river channels, the erection of embankments or dykes necessary for the protection of lands, towns, or cities from inundation. He shall also make special examinations with reference to the division of the State into several drainage districts, each of which shall include a territory drained by one natural system of drainage, and shall report to the Board of Drainage Commissioners the result of his examinations, and shall from time to time propose boundaries for such districts and recommend their formation.

SEC. 3. After the State Engineer has reported the boundaries and recommended the formation of one or more drainage districts, the Board shall proceed to consider the same, and may adopt, amend, or reject said report; but if adopted by them, either in its original form or as amended, they shall, by resolution entered upon the record of their proceedings, declare the said territory to be, and the same shall thereupon become, a drainage district, and shall be known as Drainage District Number One, Two, or Three, etc., as the case may be, numbering the districts in the order in which they are formed; and they shall record, in a book to be kept for that purpose, the boundaries, which shall be clearly defined, with map accompanying, of each separate district, its number, and date of its formation, and shall file for record with the Recorder of each county embraced, or in part embraced, in the district, a copy of the same, which shall be deemed sufficient notice of the formation of said district to all county officers, and to all parties concerned, that the said district has been formed.

SEC. 4. Within ten days after the organization of any drainage district, the Governor shall appoint three persons, residents of the district, who shall constitute a Board of Directors for the district so formed. They shall hold office for four years (unless sooner removed for cause by the Governor), and until their successors are appointed and qualified. They shall organize by electing one of their number President,

and shall take the usual oath of office; and shall each give a bond in the sum of twenty-five thousand dollars for the faithful performance of his duties, to be approved by some Superior Judge of the district, and filed with the Board of Drainage Commissioners. They shall, on or before the first day of January of each year, report to the Governor all their proceedings, showing the amount of work done, and amount of money they have expended. The Governor shall transmit the same to the Legislature.

SEC. 5. The Board of Directors shall appoint a Secretary, and have an office in the district. The Secretary shall receive a salary to be fixed by the Directors, not exceeding one hundred dollars per month, payable out of the Construction Fund of the district; and his term of office shall be at the pleasure of the Board of Directors of such district. (They shall also appoint an assistant engineer, who shall be styled Resident Engineer, and whose duties are hereinafter stated.)

SEC. 6. The Governor shall fill all vacancies that may occur in the Board of Directors, and each Director shall receive a salary of one hundred dollars per month, payable monthly out of the Construction Fund of the district.

SEC. 7. After the formation of any territory into a drainage district, the State Engineer, as soon as practicable after proper surveys have been made, shall submit to the Board of Directors of the district, plans, specifications, and estimates of the cost of the works necessary in said district, in order to secure a proper system of drainage therefor. The report shall be accompanied by the concurring or dissenting opinion of the Consulting Engineer.

SEC. 8. After the report of the State Engineer, as aforesaid, giving plans, specifications, and estimates of the cost of the works, or any modifications or changes thereof, are made to the Board of Directors of the district, the Board shall adopt, amend, or reject the whole or any portion of such plans, or may refer them back to the State Engineer for further report.

SEC. 9. After the adoption of the plans and specifications of the work to be done in the district, the Board of Directors shall advertise for thirty days, in three newspapers of general circulation published therein, for bids for the construction of all or any portion of the works embraced in said plans; the said notice shall state that the plans and specifications of said works are on file in the office of the Board of Directors of the district, and can there be examined by any person who may so desire; and shall also state that it will be unlawful for any contractor to employ any Chinese or Mongolians in the construction of such works, and state generally the terms and time in which the work shall be constructed, and that the right to reject any and all bids is reserved by said Board; and no material used in the construction of such works shall be

purchased from any contractor or manufacturer who either directly or indirectly employs any Chinese or Mongolian labor.

SEC. 10. All contracts shall be awarded to the lowest responsible bidder (if his bid is not deemed by the Board too high), and the contractor shall give a good and sufficient bond in not less than twenty-five per cent. of the estimated cost of the work contracted for; the bond, both as to its amount and the sureties thereon, shall be subject to the approval of the Board of Directors of the district, and when so approved, shall be filed in the office of said Board. Any members of the Board of Drainage Commissioners, or the State Engineer, or Consulting or Resident Engineer, or any Superintendent of said works, or any employé of the Board of Drainage Commissioners, any member of the Board of Directors of any drainage district, or any employé thereof, or of the State Engineer's Department, who shall be interested in any contract for the construction of any such works in any drainage district, shall be guilty of a felony. If, however, any emergency shall arise rendering it necessary, in the judgment of said Board of Directors, concurred in by the State Board of Drainage Commissioners, for the protection of works already completed, that immediate repairs or work should be done, the said Directors shall have the power to do such work or repairs in the manner which to them seems most advisable.

SEC. 11. The Board of Directors of the District may condemn the right of way for any work necessary for the purpose of the drainage of the district; may purchase or condemn material necessary for the work; may join, connect with, enlarge, or strengthen any works already constructed, and may condemn such lands as may be by them deemed necessary for reservoirs for storing debris from the mines, whether the same be within or without the boundaries of the district, and may provide for connecting the system of drainage of one district with that of another, or for several districts; and it is hereby declared that the use of the property, such as right of way and lands which may be condemned, taken, or appropriated under the provisions of this Act, is a public use, and that such appropriation is for the public benefit; *(provided*, that they shall not have the right or power to purchase or condemn any levee or levees.)

SEC. 12. Whenever the Board of Directors of any district cannot procure from the owner or owners thereof, without purchase, the right of way or material needed for the construction of levees or reservoirs (for the storage of debris), or procure the consent to join or connect with any existing works, or procure lands necessary for the construction and the completion of the system or plan adopted, the said Board of Directors may, in the name of the district, proceed to condemn the same under the provisions of title seven, part three,

of the Code of Civil Procedure, and amendments thereto, which are now existing or may hereafter be made; *provided*, that cities and towns having levees shall have and retain the exclusive management and control thereof, subject to the right of the district to connect therewith as herein provided.

SEC. 13. All works carried on under the provisions of this Act shall be executed under the direction of the State Engineer (who shall be appointed by the Governor), and an assistant for each drainage district, who shall be styled Resident Engineer, and whose salary shall be fixed by the Board of Directors of the district, but shall not exceed two hundred dollars per month for each month of actual service. All work shall be done under the immediate supervision of the Resident Engineer and Board of Directors of the district, and no work shall be paid for until accepted by such Resident Engineer and Board of Directors, and approved by the State Engineer.

SEC. 14. The costs of the work contemplated in this Act, embracing all contracts, purchases, or condemnations of property authorized under it, and all proper salaries and incidental expenses, shall be paid out of the "Construction Fund" of the drainage district for which such works may be constructed. Proper vouchers, in duplicate, for all such expenditures, shall be certified to by the Resident Engineer of the district, approved by the State Engineer, and submitted to the Board of Directors at their regular meetings, who shall thereupon audit and allow all just and proper claims, and certify the original voucher for the same to the State Controller. The Controller shall thereupon draw his warrant upon the State Treasurer for the amount thus certified, payable out of the "Construction Fund" of the proper district, or out of the "State Construction Fund," as the case may be. The provisions of law requiring claims to be approved by the State Board of Examiners, before a warrant shall be drawn by the Controller therefor, shall not be applicable to claims presented under the provisions of this Act.

SEC. 15. To provide funds to pay the construction of the systems of works contemplated by this Act, and all expenses connected therewith, the Assessors of the several counties embraced in whole or in part in any drainage district shall be ex officio Assessors of the district for the portion of said district included in their respective counties; and each such Assessor shall annually assess and make a duplicate assessment book of all property in that portion of the county of which he is Assessor, embraced within such drainage district, and shall deliver the said duplicate assessment book at the same time and in the same manner and to the same officer or Board that he delivers the assessment book made for purposes

miners' inches of water (of each twenty-four hours' run) used by each of such mines within the county for which he is Assessor.

SEC. 20. The Board of Directors shall, at the same time in October of each year that they levy the tax hereinbefore provided for, levy an assessment upon all hydraulic mines, and upon all mines washing earth or ores with water running into the district, of one-half of one cent for each miners' inch of water of each twenty-four hours' run, used during such year, and shall notify the Auditor of each county embraced in whole or in part in the district, of the amount so levied, and he shall compute and enter upon the duplicate assessment book the respective sums to be collected from the respective mines; and the Tax Collector shall collect said assessment at the same time and the same manner that they collect State and county taxes; and the money so collected shall be paid over in the same manner and at the same time as herein provided for the collection of taxes, and the State Treasurer shall place the same to the credit of the "Construction Fund" of the proper district.

SEC. 21. Within a reasonable time after the organization of a drainage district, the State Engineer shall make a map of all the unreclaimed swamp or overflowed land in the district rendered unfit for cultivation by reason of being swamp or overflowed and not reclaimed, and shall also prepare a list of such lands, describing them by legal subdivisions, and shall file both said map and said list in the office of the Directors of the district. Within three months after the filing of this list, the Directors of the district shall give notice for thirty days in three newspapers of general circulation published in the district, that they will hear evidence, on a day to be named in said notice, for the purpose of correcting errors or omissions in said list. After hearing such testimony as may be offered, they shall correct said list in accordance with the facts.

SEC. 22. On or before the first day of March in each year, the Directors of any drainage district in which any of the lands described in the list provided for in the preceding section have been reclaimed by reason of the construction of any of the works contemplated by this Act, shall prepare a list or lists of all such lands so reclaimed situate in such district. The list shall contain a description by legal subdivisions, or other intelligent description, of each tract so reclaimed; the name of the owner of each tract; and if unknown, then that fact; the number of acres in each tract; and shall, on or before said date, deliver to the Assessor of the county or counties in which any portion of said lands so reclaimed is situated, a certified copy of said list so far as the same relates to the lands situated in such county. Whereupon such Assessor

Auditors shall make a copy from the assessment book of that county for State and county taxation, as finally corrected and equalized by the proper authority, of all the property in that county embraced in said district, and shall immediately thereafter prepare, and forward by mail or express to said Directors, a statement showing the total value of the property thus assessed and included in said district. The said Directors must thereupon, and on some day before the first day of November of that year, levy a tax upon all the property in the district, of one-twentieth (1-20th) of one per cent. of the value of said property; and immediately thereafter they must notify the Auditor or Auditors of the county or counties embraced in whole or in part in the district of the tax and rate so levied. The Auditor of each county so notified shall thereupon compute, and enter upon said copy of the assessment book, this tax, in the same manner that he does taxes for State and county purposes. The said copy shall then be turned over to the Tax Collector of the county, and the taxes embraced in the same shall be collected, and finally paid over to the State Treasurer, in the same manner and at the same times as stated in the preceding section of this Act.

SEC. 18. The Auditors and Assessors of the counties embraced in any drainage district shall be allowed a reasonable compensation for making the duplicate assessment books, also the Auditors for making a copy of the assessment book; and these claims for such compensation shall be audited and allowed by the Directors of such drainage district, and shall be paid in the same manner as other claims against the district.

SEC. 19. The owner or owners, or the managing agent of every hydraulic mine, or any mine using water to wash the earth or ores for mining purposes, which mine may be embraced in whole or in part within any drainage district to be formed or organized under this Act, and of all mines the waters from which carrying slickens, sand, or debris therefrom runs into any such district, shall, on or before the first day of July, A.D. eighteen hundred and eighty, and every year thereafter at the time required for rendering a statement to the Assessor for the purpose of assessing for State and county taxes, render to the Assessor of the county in which the mine is located, a sworn statement showing the number of miners' inches of water (of twenty-four hours' run) used by the mine, of which he is in whole or in part owner or the managing agent, for the preceding year ending on the first day of March next preceding the rendition of such statement. The statement shall include also the name and description of the mine. Upon the receipt of such statement from the owner or managing agent of such mines, the Assessor shall enter the same in a separate column in the duplicate assessment book provided for this Act, so that it will show the number of

miners' inches of water (of each twenty-four hours' run) used by each of such mines within the county for which he is Assessor.

SEC. 20. The Board of Directors shall, at the same time in October of each year that they levy the tax hereinbefore provided for, levy an assessment upon all hydraulic mines, and upon all mines washing earth or ores with water running into the district, of one-half of one cent for each miners' inch of water of each twenty-four hours' run, used during such year, and shall notify the Auditor of each county embraced in whole or in part in the district, of the amount so levied, and he shall compute and enter upon the duplicate assessment book the respective sums to be collected from the respective mines; and the Tax Collector shall collect said assessment at the same time and the same manner that they collect State and county taxes; and the money so collected shall be paid over in the same manner and at the same time as herein provided for the collection of taxes, and the State Treasurer shall place the same to the credit of the "Construction Fund" of the proper district.

SEC. 21. Within a reasonable time after the organization of a drainage district, the State Engineer shall make a map of all the unreclaimed swamp or overflowed land in the district rendered unfit for cultivation by reason of being swamp or overflowed and not reclaimed, and shall also prepare a list of such lands, describing them by legal subdivisions, and shall file both said map and said list in the office of the Directors of the district. Within three months after the filing of this list, the Directors of the district shall give notice for thirty days in three newspapers of general circulation published in the district, that they will hear evidence, on a day to be named in said notice, for the purpose of correcting errors or omissions in said list. After hearing such testimony as may be offered, they shall correct said list in accordance with the facts.

SEC. 22. On or before the first day of March in each year, the Directors of any drainage district in which any of the lands described in the list provided for in the preceding section have been reclaimed by reason of the construction of any of the works contemplated by this Act, shall prepare a list or lists of all such lands so reclaimed situate in such district. The list shall contain a description by legal subdivisions, or other intelligent description, of each tract so reclaimed; the name of the owner of each tract; and if unknown, then that fact; the number of acres in each tract; and shall, on or before said date, deliver to the Assessor of the county or counties in which any portion of said lands so reclaimed is situated, a certified copy of said list so far as the same relates to the lands situated in such county. Whereupon such Assessor

shall enter the same upon the duplicate assessment book provided for in this Act.

SEC. 23. After any land has been reclaimed, and lists filed with the Assessor, the Board of Directors shall assess the value of the reclamation to each tract of said land, not to exceed three dollars per acre, which shall be payable in six equal payments; *provided*, no one owner shall be liable for the payment due from any other owner. The Directors shall, before the first day of October of each year, notify the Auditors of the counties in which the land is situated, the amount of assessment per acre that is to be collected on each tract of land, and the Auditor shall compute the same and enter the amount in a separate column in the duplicate assessment book prepared for the district, and the Tax Collector shall collect said assessment at the same time and in the same manner as he collects State and county taxes; and the money so collected shall be turned over to the County Treasurer and paid by him to the State Treasurer, the same as other moneys collected under the provisions of this Act. The State Treasurer shall place the same to the credit of the "Construction Fund" of the district to which it belongs.

SEC. 24. There shall be levied in the year eighteen hundred and eighty, and each year thereafter, by the same officers, at the same time and in the same manner that other State taxes are levied, a tax of one-twentieth of one per cent. on all the taxable property in the State in addition to other State taxes. Said tax must be collected by the same officers, at the same time, and paid over at the same time that other State taxes are collected and paid over. The State Treasurer shall place all moneys received by him on account of such tax to the credit of a fund, to be known as the "State Drainage Construction Fund." The State Drainage Construction Fund must be used and drawn upon in the same manner, and for the same purposes, as the "Construction Fund" of a drainage district; *provided*, that all moneys raised under the provisions of this Act shall be used exclusively for the construction of dams for impounding the debris from the mines hereinbefore specified, and for the improvement and ratification of river channels in which said debris flows within the drainage districts to be formed under the provisions of this Act, at such points thereof as shall be designated by the State Engineer, or deemed necessary by the Board of Directors of such drainage district.

SEC. 25. The State Treasurer is hereby authorized and required to pay all warrants drawn by the State Controller upon the "Construction Fund" of any drainage district, or upon the "State Drainage Construction Fund," out of such fund; *provided*, that if there be no money in the "State Drainage Construction Fund" to meet the payment of any warrant on that fund, the State Treasurer shall pay such warrants out of

any other money in the State Treasury not otherwise appropriated, but not exceeding in the aggregate the amount, or the balance of the amount, to be paid into the "State Drainage Construction Fund," under this Act, for the current year, upon an estimate based upon the assessed value of all the taxable property in the State for the preceding year; *and provided further*, that no indebtedness shall be created against either of said funds for any one year in excess of the amount provided to be raised by the tax levy for said year for said funds; said levy to be estimated upon the assessment roll for the previous year; and when the State tax in this Act provided for is collected and paid into the treasury, the money so paid shall be repaid from the "State Drainage Construction Fund."

SEC. 26. All officers acting under the provisions of this Act, and their bondsmen, are hereby made responsible for the collection, safe keeping, and proper accounting of the taxes and funds intrusted to them, in the manner herein provided in accordance with the laws regulating their duties and responsibilities in connection with State and county funds.

SEC. 27. Nothing in this Act shall be construed in such a manner as to invalidate the indebtedness of any reclamation or levee district, or any assessment levied therein, or to affect in any manner whatever the laws in force in relation to reclamation and levee districts; nor shall any levees be condemned or purchased under the provisions of this Act.

SEC. 28. No Chinese or Mongolians shall be employed in any capacity whatever on any work to be done in pursuance of the provisions of this Act. [In effect April 23, 1880. Stats. 1880, p. 123; Ban. Ed., p. 389.]

An Act prescribing the form of complaint in actions to recover delinquent taxes, and to authorize the bringing of suits therefor.

SECTION 1. In any action that may be hereafter commenced in any county, or city and county, in this State, for the collection of delinquent taxes for any fiscal year, the complaint may be in the following form, and shall be legally sufficient, and on the trial thereof the duplicate assessment roll for any said fiscal year, of said county, or city and county, or a copy of any entry therein duly certified, showing unpaid taxes against the defendant, or in cases where the defendant is sued in a representative capacity against any person or estate he represents, shall be prima facie evidence of the plaintiff's right to recover: (Title of Court.) (Name of plaintiff) vs. (name of defendant). Plaintiff avers that defendant is indebted to plaintiff in the sum of $—— (naming the amount for county, or city and county), taxes, with five per cent. penalty added

thereto for the non-payment thereof, and interest thereon at the rate of two per cent. per month from the (date), and fifty cents costs of advertising. Plaintiff further avers that defendant is indebted to plaintiff in the further sum of $—— (naming amount) for State taxes, with five per cent. penalty added thereto for the non-payment thereof, and interest thereon at the rate of two per cent. per month from (date), and fifty cents costs of advertising, which said taxes were duly assessed and levied upon (the real or personal) property of said defendant, to wit: (describe property assessed) for the fiscal year (naming the year). Wherefore, plaintiff prays judgment against said defendant, for said several sums, with interest and penalty as aforesaid, and costs of suit. (Signature of attorney.) And in any case where the defendant is sued in a representative capacity, such other further or additional allegations as may be necessary to charge him in such capacity; *and it is further provided*, that any county, or city and county, where such taxes are delinquent, may sue in its own name for the recovery of delinquent taxes, whether the same be for county, or city and county, and State purposes, or taxes, or either of them. [In effect April 23, 1880. Stats. 1880, p. 136; Ban. Ed., p. 402.]

An Act to provide a system of drainage for agricultural, swamp, and overflowed lands.

SECTION 1. Whenever two or more land-owners shall petition the Board of Supervisors for a ditch, drain, or other watercourses, defining the place of beginning, and the lands through which it or they are to pass to their outlets, and state their estimated course, and shall give said Supervisors good and sufficient bonds for the payment of all costs that may accrue (provided said petition should not be granted), said Supervisors shall, within thirty days of the presentation of said petition, appoint a day for the hearing of the same; they shall also cause to be published, in some newspaper having a general circulation in the county, a copy of said petition, together with the time and place set to hear and answer said petition.

SEC. 2. Said Supervisors shall also direct the County Surveyor to survey the line of said proposed ditch, or waterway, taking notes of the descent of the land, and report to them on or before said day of hearing the descent, if any, between the head and outlet of said ditch, together with a list of the intermediate grades, and the lands or interests to be affected thereby, and such other information as may come under his notice on the subject. In locating such ditches or drains, when practicable, they shall be located on section or subdivision lines.

SEC. 3. If, on the day of hearing, the Supervisors shall find the location of said ditch impracticable, for causes hereinafter described, the costs shall be collected from the petitioners or their bondsmen.

SEC. 4. If the Supervisors shall, on hearing the petition, find that the construction of the ditch would be conducive to the general welfare of the land-owners so petitioning, and not inconsistent with the rights and privileges of other contiguous territory to construct drains or ditches, and if the Surveyor reported sufficient fall to make the ditch available, then the Supervisors shall, in their discretion, grant the prayer of the petitioners, and shall proceed to examine the lands affected by it, and shall cause said ditch to be surveyed, and stakes set every one hundred feet, and cause a journal to be made of the depth and width to be excavated at each stake.

SEC. 5. Said Supervisors shall then apportion the excavation of said ditch to the lands affected thereby, according to the benefits received, after notice to the owners of the time of making such apportionment, and giving to each a hearing. They shall also, in like manner, apportion the cost of locating, including right of way (when not donated), in lawful money of the United States, and shall appoint a day for the hearing of exceptions to the apportionment. On the second hearing, they shall apportion the cost and labor of said ditch to the land affected thereby; but no Supervisor who is directly or indirectly interested in such ditch shall take part in such apportionment.

SEC. 6. The Board shall then give notice, in writing, to all the resident land-owners of the part or ditch apportioned to them, as described by the stakes and their numbers, and of the specifications of the ditch, and also of the costs in money as apportioned to them; and if any of the owners of lands affected thereby are non-residents of the county, they shall cause to be printed, in a county newspaper having a general circulation, a copy of said apportionment, together with the time set for the completion of the work.

SEC. 7. On the day set for the completion of the work, or as soon thereafter as practicable (which shall be after a reasonable time), said Supervisors shall proceed to examine said ditch or ditches, and if, in their opinion, any portion thereof shall not be completed according to the specifications, they shall notify the person to whom said portion was awarded to complete the same within such time as they may designate. If not so completed at the expiration of the time specified, said Board of Supervisors shall advertise the construction of the same by posting notice in three conspicuous places within the territory affected by said ditch. Upon the day specified in said notice, said Supervisors shall proceed to let the same to the lowest responsible bidder, who shall give such bonds as

shall be required by said Board, and shall proceed to complete such works to the satisfaction of said Board in the time agreed upon. The Board shall report the cost of such work to the County Auditor, who shall cause the amount thereof to be entered on the tax books of the county, and the same shall be a tax upon said lands, which amount shall be collected the same as other taxes and paid to the party performing such work.

SEC. 8. The County Treasurer shall place such funds to the credit of each respective ditch fund, and shall pay out the same on warrants drawn by the Board of Supervisors. The Treasurer shall receive as compensation for his services one per cent. of all moneys by him disbursed under this Act.

SEC. 9. All ditches and drains constructed under the provisions of this Act shall be in charge of the Road Overseer through whose district such drains are constructed. The owners of the land shall keep in repair such ditches in accordance with the apportionment, and if not so kept in repair the Board of Supervisors shall direct the same to be done, and the cost thereof shall be a tax upon the land and be collected as hereinbefore provided.

SEC. 10. Any person causing an encroachment or obstruction to any ditch or drain created under the provisions of this Act, and failing to remove the same for the space of twenty-four hours after notice shall have been given to such person by the Roadmaster, if he can be found in the county, otherwise by posting by him at or near the place of encroachment or obstruction, may be fined not exceeding two hundred dollars, or imprisoned not more than thirty days in the county jail, or by both such fine and imprisonment. The fines so collected shall be placed to the credit of the district road fund where such encroachment or obstruction is had, and proceedings for such offenses may be had before any Court of competent jurisdiction.

SEC. 11. The provisions of this Act shall not be construed so as to permit waters to be carried out of their natural course to augment other streams or drains, to the damage of the residents along the banks of the streams or drains so augmented.

SEC. 12. Whenever the Board of Supervisors cannot purchase, at a reasonable price, or procure the right of way, or procure the consent of all parties interested to join or connect with any existing ditches or outlets, the President of the Board may proceed to condemn the same under the provisions of title seven part third of the Code of Civil Procedure, and amendments thereto, which are now existing or may hereafter be made, at the expense of the parties so petitioning. [In effect March 3, 1881. Stats. 1881, p. 15.]

An Act to authorize the Boards of Supervisors of the several counties in this State to grant franchises and privileges to corporations, associations, or individuals.

SECTION. 1. The Board of Supervisors of any of the counties of this State are hereby authorized and empowered to grant the privilege of constructing booms for the purpose of holding logs and timber to companies, corporations, or individuals, and to prescribe the conditions on which the same shall be maintained, and the prices which may be charged for the use of the same.

SEC. 2. This Act will be in force from and after its passage, provided that navigation shall not be interfered with thereby. [In effect March 3, 1881. Stats. 1881, p. 25.]

An Act to allow unincorporated towns and villages to equip and maintain a fire department, and to assess and collect taxes, from time to time, for such purpose, and to create a board of Fire Commissioners.

SECTION 1. Any unincorporated town or village of this State may equip and maintain a fire department for the purpose of protecting property from destruction by fire.

SEC. 2. Upon the application, by petition, of fifty or more taxpayers and residents of said town or village to the Board of Supervisors of the county in which such town or village is situated, the said Board of Supervisors shall appoint three Commissioners, to be known as and called a Board of Fire Commissioners of the town or village for which they are appointed, who shall hold their office until the second Monday in April next thereafter, and until their successors are elected and qualified.

SEC. 3. The Board of Fire Commissioners so appointed by said Board of Supervisors, and their successors, shall be authorized and empowered, and it shall be their duty:

First—To fix and establish the fire limits of said town or village, and shall accurately describe the same, in writing, by metes and bounds, and file a copy thereof, subscribed by them, in the office of the County Recorder of the county in which said town or village is situated.

Second—To make all contracts with water companies for a supply of water, and attaching hydrants or fire plugs to the pipes, or conduits, or cisterns of such water company; to make contracts for and to purchase the engines, hose, hose carts, or carriages, and other appliances for the full equipment of a fire company, or department.

Third—To call an election and submit to the electors residing within the fire limits fixed by them, the question whether a tax shall be levied and raised for the purpose of

establishing and maintaining a fire department for the said town or village, and for protecting the same from loss by fire.

Fourth—To appoint Judges, not less than three, and other officers, to conduct such election, and to issue certificates of election.

Fifth—To do and perform all such other acts and things as may be proper and necessary to carry out the full intent and meaning of this Act.

SEC. 4. Said election must be called by posting notices in three of the most public places in said town, or village, for not less than ten days, and also, if there is a newspaper printed and published in the town or village, by advertising such notice therein at least two regular issues of the paper.

SEC. 5. Such notice must specify the time and place of holding the election, and the amount required for each specific purpose; and the amount of money to be raised shall not exceed in any one year, one per cent. of the assessable property within the fire limits as fixed by the Board of Fire Commissioners; *provided*, that after the first year the amount so raised shall not exceed one-half of one per cent.

SEC. 6. The Board of Fire Commissioners must appoint three Judges and two Clerks to conduct the election, and it must be held in all respects as nearly as practicable in conformity with the general election law; *provided*, that no new register shall be required, nor legal ballot paper; *and provided further*, that the polls may be opened at eight o'clock A. M. and close at five o'clock P. M. on the day appointed for such election.

SEC. 7. At such election the ballots must contain the words, "Tax—Yes," or "Tax—No," and also the name of one person as Assessor, and one as Collector. The same person may be elected to both offices. The compensation for assessing and collecting the tax shall be fixed by the Board of Fire Commissioners, but shall not exceed one hundred and fifty dollars.

SEC. 8. The Judges of Election shall, within twenty-four hours after holding said election, make returns and certify said votes, and the names of the person or persons voted for, to the said Board of Fire Commissioners, and within five days after the returns have been received by the Board of Fire Commissioners they shall count the votes, determine who has been elected, and forthwith issue certificates of election to the persons elected for Assessor and Collector.

SEC. 9. The Assessor, on receiving his certificate of election, must forthwith assess, in the manner provided by law, all the taxable property within the fire limits fixed by said Board, and within thirty days return his roll, footed up, to the Clerk of the Board of Supervisors. The said Board of Supervisors, upon receiving the roll, must deduct fifteen per cent. therefrom for anticipated delinquencies, and then by dividing the

sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required; and the rate so ascertained, using the full cent on each hundred dollars in place of any fraction, is hereby levied and assessed to, on, or against the persons or property named or described in the roll, and is a lien on all such property until the tax is paid; and the tax, if not paid within the time hereinafter provided, shall be delinquent; and immediately after such delinquency, the Collector shall proceed to collect the same in the mode and manner provided by law for the collection by County Tax Collector of delinquent State and county taxes.

SEC. 10. The Clerk of the Board of Supervisors, upon receiving the assessment roll from the Assessor, must give five days' notice thereof by posting a notice in three public places in the said town or village, and the Board of Supervisors must at the expiration of said time sit for at least three days as a Board of Equalization, at such time and place as has been named in such posted notice; and they have the same power as County Boards of Equalization to make any changes in the assessment roll.

SEC. 11. As soon as the rate of taxation has been determined, as provided in the preceding sections, the said Board of Supervisors must place the tax list or roll in the hands of the Collector, who shall then give notice, by publication in some newspaper published within the said town or village, that the said tax is now due and payable in his office, and unless paid within thirty days will be delinquent. He must proceed at once to collect the tax, and within thirty days return the tax list to the Board with the word "paid" marked opposite the name of each person or description of property, from whom, or on which, he has received the tax; and he must, also, at the same time, file with the said Board of Fire Commissioners the County Treasurer's receipt for all the moneys by him collected, and the property on the roll not by the Collector marked "paid" is delinquent.

SEC. 12. All moneys arising from the tax herein authorized to be levied and collected shall be kept by the Treasurer of the county in which said town or village is situated, subject only to the order of said Board of Fire Commissioners.

SEC. 13. The Treasurer shall receive no compensation for the receipt and disbursement of moneys derived under the provisions of this Act.

SEC. 14. The Collector must execute an official bond in an amount to be fixed by the Board of Fire Commissioners.

SEC. 15. The Board of Fire Commissioners are hereby directed and empowered to make all necessary arrangements for the purchase of rights of making connections with the pipes of water companies for fire-plugs or hydrants, in such

part of the town or village as they shall deem best for the common interest, and also for purchasing fire hose and carriages, subject, however, to the provisions hereinbefore contained.

SEC. 16. They shall procure all necessary books and blanks for the purpose of keeping a correct record of their proceedings; and they shall keep a record of all their acts, of all moneys received and disbursed by them, which said books shall be open to public inspection at all times.

SEC. 17. All accounts, bills, and demands against the fire department shall be audited, allowed, and paid by the Board of Fire Commissioners by warrants drawn on the County Treasurer, and the County Treasurer shall pay the same in the order in which they are presented.

SEC. 18. The Board of Fire Commissioners shall, from time to time, and in like manner, submit to a vote of the electors of said town or village the propriety of levying and raising an additional tax for the keeping in repair the apparatus of said fire department, and maintaining the same in good order and condition.

SEC. 19. No officer or officers created by this Act, except the Assessor and Tax Collector, shall receive any compensation for his or their services.

SEC. 20. That in case of a vacancy of any or all of the members of the Board of Fire Commissioners, or in the office of Assessor or Tax Collector, after election had, by death, resignation, or otherwise, such vacancy shall be filled by appointment by the Board of Supervisors of the county in which said vacancy may happen.

SEC. 21. That in case an election be had under the provisions of this bill, and the electors, by vote, shall decline to equip and maintain a fire department, and refuse to levy and collect a tax for that purpose, no other election shall be called or held under this Act within one year next thereafter.

SEC. 22. An election shall be held annually, on the first Monday of April, for the election of three Fire Commissioners, who shall take their office on the next succeeding Monday in the same month; and it shall be the duty of the Board of Fire Commissioners to give notice of such elections by posting notices thereof in three public places in the town, for at least two weeks before the day of election. They shall also appoint the Judges of Election.

SEC. 23. Each Board of Fire Commissioners shall, at the expiration of their term of office, turn over to their successors all the books and documents belonging to the office of Fire Commissioners, taking their receipt for the same.

SEC. 24. No assessment, or act relating to assessment or collection of taxes, or elections held under the provisions of this Act, shall be illegal, void, or voidable on account of any

error, omission, or informality, or failure to comply strictly with the provisions of this Act, nor on account of any misnomer; but the same shall be liberally construed with a view to hold valid all acts done under this Act.

SEC. 25. The said Board of Fire Commissioners may regulate the construction of, and order the suspension, discontinuance, removal, repair, or cleaning of fireplaces, chimneys, stoves, and stovepipes, flues, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business which may be dangerous in causing or promoting fires, and prescribe limits within which no dangerous nor obnoxious and offensive business may be carried on.

SEC. 26. They may adopt such ordinance, within the purview of the preceding section, as they may deem proper to prevent fires and conflagrations, and for the protection of property at and during the pendency of any fire, and for that purpose may provide that at and during the pendency of any fire the officers of the fire company or companies present shall be vested with police powers. Such ordinance shall be signed by the said Fire Commissioners, and published in a newspaper printed in said town or village, or posted in three of the most public places thereof, for the period of two weeks, at the end of which time it shall be and become a law for the government of the inhabitants of said town or village.

SEC. 27. Any person who shall violate any of the provisions of said ordinance shall be guilty of a misdemeanor.

SEC. 28. Any Justice of the Peace within the townships within which said town or village is situated, shall have jurisdiction of all prosecutions under this Act, and sections one thousand four hundred and twenty-six to one thousand four hundred and forty-nine, both inclusive, title nine, chapter one, of the Penal Code, are hereby made applicable to proceedings under this Act.

SEC. 29. All Acts or parts of Acts, so far as they do conflict with the provisions hereof, are hereby repealed. [In effect March 4, 1881. Stats. 1881, p. 26; Ban. Ed., p. 25.]

An Act to define and enlarge the duties and powers of the Board of State Viticultural Commissioners, and to authorize the appointment of certain officers, and to protect the interests of horticulture and viticulture.

SECTION 1. The Board of State Viticultural Commissioners, in addition to the duties and powers provided for by the Act entitled "An Act for the promotion of viticultural industries of the State," approved April fifteenth, eighteen hundred and eighty, shall, in respect to diseases of grape vines and vine pests, constitute a Board of Health. It shall, in addition to laboratory work, cause practical experiments to be made to

determine or demonstrate the utility of known and new remedies against such diseases and pests.

SEC. 2. The Board shall elect of their own number, or appoint from without their own number, a competent person to serve as Chief Executive Viticultural Officer, who shall perform also the duties of Viticultural Health Officer, under direction of said Board, and subject to removal from such office at any time by the Board.

SEC. 3. The Viticultural Health Officer shall have power, subject to the approval of the Board, to prevent the spread of vine diseases and vine pests, by declaring and enforcing rules and regulations in the nature of quarantine, to govern the manner of, restrain, or prohibit the importation into the State, and the distribution and disposal within the State, of all vines, vine cuttings, debris of vineyards, empty fruit boxes, or other material on or by which the contagion of vine diseases and germs of vine pests may be introduced into the State, or transported from place to place within the State; to declare and enforce regulations approved by the Board for the disinfection of vines, vine cuttings, vineyard debris, empty fruit boxes, and other suspected material dangerous to vineyards, while in transit, or about to be distributed, or transported into, or within the State; to classify the vineyards and viticultural regions of the State, according to the degree of health, or vine disease prevailing therein, and to change the same as circumstances may require to be done, subjecting each class to such varying rules and regulations, respecting the introduction or transportation of vines, vine cuttings, and other material liable to spread contagion of disease among vines, as may, in the opinion of the Board, become necessary and expedient for the preservation of vineyards. Such rules and regulations shall be circulated in printed form by the Board among the vine growers and fruit dealers of the State, shall be published at least thirty days in two daily newspapers of general circulation in the State, not of the same city or county, and shall be posted in a conspicuous place at the county seat of each county affected by their provisions.

SEC. 4. The Viticultural Health Officer may appoint local resident Inspectors in any and all of the viticultural regions of the State, whose duty shall be to report to him concerning the health of grape vines, the progress of vine diseases and pests, and all violations of the rules and regulations of the Board; to certify to the proper disinfection of vines, vine cuttings, empty fruit boxes, and other transportable articles required by the Board to be disinfected before transportation, or while in transit, or after delivery at any point of destination, the methods of disinfection to be determined and approved by the Health Officer and the Board; to seize upon and destroy all vines, vine cuttings, debris of vineyards, empty fruit boxes, and other

material liable to spread contagion, which may be found in transit, or delivered after transportation, not certified to as required by the Board; *provided*, that the same may be exempt from such destruction if the cost of disinfection by such Inspector shall be provided for by the owner or agent in charge thereof, as may be prescribed for such cases of negligence, carelessness, or violation of quarantine rules, and to keep a record of all proceedings as such Inspectors; *provided*, that there shall be no compensation for such services of inspection, excepting a fee not to exceed one dollar for each certificate of disinfection, in case of compliance with quarantine regulations, and not to exceed five dollars for each certificate of disinfection, after seizure for non-compliance; *provided, however*, such inspection may be employed at the option of the owners of property requiring disinfection to disinfect the same. All vines, or other articles absolutely prohibited of importation or transportation, may be promptly destroyed by any Inspector discovering the same transported or in transit, in violation of regulations, and the cost of such seizure, together with a fee of ten dollars, shall be paid to such Inspector out of any fine that may be collected from the party or parties guilty of such violation. Willful violation of the quarantine regulations of the Board shall be considered a misdemeanor, and punishable by a fine of not less than twenty-five nor more than one hundred dollars. Whenever required, for the convenience of vine or fruit growers, or fruit dealers, a resident Inspector shall be appointed, upon petition of any three neighboring vine or fruit growers, or dealers in grapes, to reside in their vicinity, if not already provided for; and there shall be not less than two Inspectors appointed for each county which is subjected to such quarantine regulations, and they shall each be subject to removal at the will of the Viticultural Health Officer, if incompetent, or they fail to perform their duties, or are unreasonably distasteful to vine growers and grape dealers.

SEC. 5. It shall be also the duty of the Chief Executive Viticultural Officer to personally visit, examine, and report upon the several viticultural regions of the State; to prepare documents for publication, as required by the Board, relating to any and all branches of viticultural industry, including treatises for the instruction of the public; to supervise the preparation of reports for publication, and especially report upon the practicability and means of eradicating diseases from vineyards, and to superintend experiments with known and new remedies.

SEC. 6. All printing heretofore ordered by the Board shall be paid for out of the appropriations heretofore made for its use. All printing required hereafter shall be done by the State Printer.

SEC. 7. The salary of the Chief Executive Viticultural Officer

shall be fixed by the Board, not to exceed one hundred and fifty dollars per month, for services while engaged as such officer, and his actual traveling expenses shall be allowed, not to exceed five hundred dollars per annum.

SEC. 8. The Board of State Viticultural Commissioners shall also appoint an officer, who shall be especially qualified by practical experience in horticulture for the duties of his office, to perform similar duties respecting the protection of fruit and fruit trees as are provided for in this Act in reference to grapevines, with like powers; and the salary and traveling expenses of such officer shall be fixed by the said Board at the same amounts provided for in the case of the Chief Executive Viticultural Officer; and the said Board shall have power to establish such quarantine rules and regulations as are required for the protection of fruit and fruit trees from the spread of insect pests.

SEC. 9. There is hereby appropriated for the uses of the Board of State Viticultural Commissioners, as set forth in this Act, and in the Act providing for its organization, out of any moneys in the State treasury not otherwise appropriated, the sum of ten thousand dollars for the year commencing July first, eighteen hundred and eighty-one; and ten thousand dollars for the year commencing July first, eighteen hundred and eighty-two; and the State Controller will draw his warrants upon the State Treasurer in favor of the Treasurer of the said Board for the said sums, or any part thereof, when they became available, upon proper demand being made for the same by said Board; *provided*, that no claim shall be paid out of said appropriation until the same shall have been presented to and approved by the State Board of Examiners, [In effect March 4, 1881. Stats. 1881, p. 51; Ban. Ed., p. 51.]

An Act to amend an Act entitled an Act for the protection of settlers on public lands claimed by the State, approved March 10, 1874.

SECTION 1. Section one of an Act entitled an Act for the protection of settlers on public lands claimed by the State, approved March tenth, eighteen hundred and seventy-four, is hereby amended to read as follows:

1. From and after the passage of this Act, no claim shall be made by the State to any land as swamp or overflowed, which was not returned as such by the United States Deputy Surveyor, nor shall the same be segregated by the authority of the State for which pre-emption or homestead patents have been issued by the United States, or upon which there are settlers, occupying the land in good faith, who have filed their pre-emption or homestead declaratory statement. Nor shall the Surveyor General receive any application to purchase as

swamp or overflowed lands, any land not returned as such by the United States Deputy Surveyor, unless the application be accompanied by a certificate from the Register of the United States Land Office for the district in which the land is situated, or by the affidavits of two disinterested persons, that there is no pre-emption or homestead settler upon the land sought to be purchased, or if there is such settler, that he has resided on the land more than six months prior to the time of making such application; *provided*, that the application shall be invalid in every case where there is a valid pre-emption filing or homestead entry on the land sought to be purchased at the time such application is made. [In effect March 7, 1881. Stats. 1881, p. 72; Ban. Ed., p. 73.]

An Act entitled an Act to enable purchasers of State lands to redeem the same, where their titles have been or may hereafter be foreclosed for non-payment of interest.

SECTION 1. In all cases where the title of purchasers of land from the State has been foreclosed, or attempted to be foreclosed, or that may hereafter be foreclosed, for non-payment of interest, said purchasers, their executors, administrators, or successors in interest shall have, twelve months after said foreclosures are or have been completed, within which to redeem such land by paying to the County Treasurer, for the benefit of the fund, or parties entitled thereto, all delinquent interest, and interest that would have accrued in case there had been no foreclosure; also, all costs of foreclosure to be paid to the fund, or the parties who paid said costs. When said payments are made, and indorsed on the certificate of purchase, specifying the amount paid as interest and for costs, and duly reported to the Register of the Land Office, the annulments shall be canceled by said officer, and the rights of the purchasers shall thereby be fully restored. [In effect March 7, 1881. Stats. 1881, p. 65; Ban. Ed., p. 66.]

An Act to protect and promote the horticultural interests of the State.

SECTION 1. Whenever a petition is presented to the Board of Supervisors of any county, and signed by five or more persons who are resident freeholders and possessors of an orchard, or both, stating that certain or all orchards, or nurseries, or trees of any variety, are infected with scale bug, codling moth, or other insects that are destructive to trees, and praying that a commission be appointed by them, whose duty it shall be to supervise their destruction, as hereinafter provided, the Board of Supervisors shall, within twenty days thereafter, select three Commissioners for the county, to be known as a County

Board of Horticultural Commissioners. The Board of Supervisors may fill any vacancy that may occur in said Commission by death, resignation, or otherwise, and appoint one Commissioner each year, one month or thereabouts previous to the expiration of the term of office of any member of said Commission. The said Commissioners shall serve for a period of three years from the date of their appointment, except the Commissioners first appointed, one of whom shall serve for one year, one of whom shall serve for two years, and one of whom shall serve for three years, from the date of appointment. The Commissioners first appointed shall themselves decide, by lot, or otherwise, who shall serve for one year, who two years, and who three years, and shall notify the Board of Supervisors of the result of their choice.

SEC. 2. It shall be the duty of the County Board of Horticultural Commissioners in each county, whenever they shall be informed by complaint of any person residing in such county, that an orchard, or nursery, or trees, or any fruit-packing house, storeroom, saleroom, or any other place in their jurisdiction, is infested with scale bug, codling moth, red spider, or other noxious insects (liable to spread contagion dangerous to the trees or fruit of complainant), or their eggs or larvæ, injurious to fruit or fruit trees, they shall cause an inspection to be made of the said premises, and if found infected they shall notify the owner or owners, or the person or persons in charge or possession of the said trees, or places, as aforesaid, that the same are infected with said insects, or any of them, or their eggs or larvæ, and shall require such person or persons to disinfect the same within a certain time, to be specified. If, within such specified time, such disinfection has not been accomplished, the said person or persons shall be required to make application of such treatment for the purpose of destroying them as said Commissioners shall prescribe. Said notices may be served upon the person or persons owning or having charge or possession of such infested trees, or places, or articles as aforesaid, by any Commissioner, or by any person deputed by the said Commissioners for that purpose, or they may be served in the same manner as a summons in a civil action. If the owner or owners, or the person or persons, in charge or possession of any orchard, or nursery, or trees, or places, or articles, infested with said insects, or any of them, or their larvæ or eggs, after having been notified as above to make application of treatment as directed, shall fail, neglect, or refuse so to do, he or they shall be deemed guilty of maintaining a public nuisance, and any such orchards, nurseries, trees, or places, or articles thus infested, shall be adjudged and the same is hereby declared a public nuisance, and may be proceeded against as such. If found guilty, the Court shall direct the aforesaid County Board of Horticultural Commis-

sioners to abate the nuisance. The expenses thus incurred shall be a lien upon the real property of the defendant.

SEC. 3. Said County Board of Horticultural Commissioners shall have power to divide the county into districts, and to appoint a local Inspector for each of said districts. The duties of such local Inspectors shall be prescribed by said County Board.

SEC. 4. It shall be the duty of said County Board of Commissioners to keep a record of their official doings, and to make a report to the Board of State Viticultural Commissioners on or before the first day of November of each year, who shall incorporate the same in their annual reports.

SEC. 5. It shall be the duty of the Commissioners at large, appointed by the Board of State Viticultural Commissioners for such purpose, to recommend, consult, and act with the county Board of Commissioners in their respective counties as to the most efficacious treatment to be adopted for the extermination of the aforesaid insects, or larvæ, or eggs thereof, and to attend to such other duties as may be necessary to accomplish or carry out the full intent and meaning of this Act.

SEC. 6. Each County Commissioner and local Inspector may be paid five dollars for each day actually engaged in the performance of his duties under this Act, payable out of the county treasury of his county; *provided*, that no more shall be paid for such services than shall be determined by resolution of the Board of Supervisors of the county for services actually and necessarily rendered.

SEC. 7. Each of said Commissioners may select one or more persons, without pay, to assist him in the discharge of his duties, as he may deem necessary.

SEC. 8. If any County Board of Commissioners, after having received complaint in writing, as provided for in section two of this Act, shall fail to perform the duties of their office, as required by this Act, they may be removed from office by the Board of Supervisors, and the vacancy thus formed shall be filled in the same manner as provided for in this Act.

SEC. 9. Nothing in this Act shall be construed so as to affect vineyards or their products. [In effect March 14, 1881. Stats. 1881, p. 86; Ban. Ed., p. 88.]

An Act to provide a State Hospital and Asylum for Miners.

SECTION 1. There shall be erected, as soon as conveniently may be, upon some suitable site, to be determined and obtained as is hereinafter provided, a public hospital and asylum for the reception, care, medical and surgical treatment, and relief of the sick, injured, disabled, and aged miners, which shall be known as the "California State Miners' Hospital and Asylum."

SEC. 2. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint five persons to serve as Trustees of the said institution, who shall be a body politic and corporate, by the name and style of the "Trustees of the California State Miners' Hospital and Asylum," and shall manage and direct the concerns of the institution, and make all necessary by-laws and regulations, and shall have power to receive, hold, dispose of, and convey all real and personal property conveyed to them by gift, devise, or otherwise, for the use of said institution, and shall serve without compensation. Of those first appointed, two shall serve for two years, and three for four years; and at the expiration of the respective terms, each class thereafter shall be appointed for four years. A vacancy in said Board, from any cause, shall be filled by appointment by the Governor, for the unexpired term.

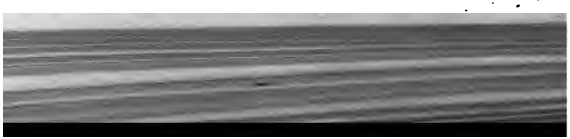
SEC. 3. The said Trustees shall have charge of the general interests of the institution; they shall appoint the Superintendent, who shall be a skillful physician and surgeon, subject to removal or re-election no oftener than in periods of ten years, except by infidelity to the trust reposed in him, or for incompetency.

SEC. 4. The Trustees, by and with the consent of the Governor, shall make such by-laws and regulations for the government of the institution as shall be necessary; they shall appoint a Treasurer, who shall give bonds to the people of the State of California for the faithful discharge of his duties; and they shall fix the compensation of all officers, assistants, and attachés, who may be necessary for the just and economical administration of the affairs of said institution.

SEC. 5. Indigent miners shall be charged for medical attendance, surgical operations, board, and nursing while residents in the hospital and asylum, no more than the actual cost; paying patients, whose friends can pay their expenses, and who are not chargeable upon townships and counties, shall pay according to the terms directed by the Trustees.

SEC. 6. The several Boards of Supervisors of counties, or any constituted authority in the State having care and charge of any indigent, sick, or aged person or persons, if satisfactorily proven by them to have been miners, shall have authority to send to the "California State Miners' Hospital and Asylum" such persons, and they shall be severally chargeable with the expenses of the care, maintenance, and treatment, and removal to and from the hospital and asylum of such patients.

SEC. 7. The Trustees shall, annually, at such time as the Governor may designate, report to him, for transmission to the Legislature, such a statement as he may require as to the management of the said hospital and asylum. [In effect March 14, 1881. Stats. 1881, p. 81.]



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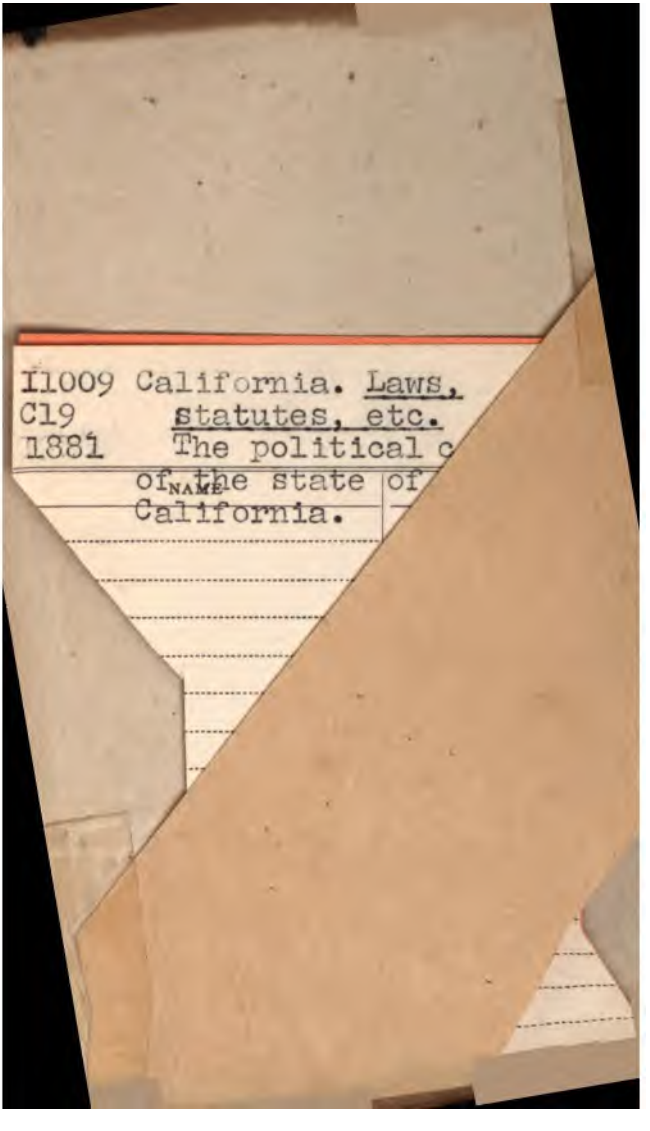
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